Indian Penal Code (Act XLV of 1860)

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THE INDIAN PENAL CODE.

ACT No. XLV OF 1860.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

Received the Assent of the Governor General on the 6th of October 1860

CHAPTER I.

INTRODUCTION.

Preamble.

WHEREAS it is expedient to provide a General Penal Code for British India; It is enacted as follows:—

Title and extent of operation of the Code.

1. This Act shall be called THE INDIAN PENAL CODE, and shall take effect on and from the 1st day of May 1861, throughout the whole of the Territories which are or may become vested in Her Majesty by the Statute 21 & 22 Vic., c. 106, entitled "An Act for the better government of India," except the Settlement of Prince of Wales' Island, Singapore, and Malacca.

Punishment of offences committed within the Indian Territories.

2. Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said Territories on or after the said 1st day of May 1861.

The legislative powers of the Supreme Government, at the passing of this Act, were defined in the 3 & 4 Wm. IV, c. 85, which empowers the Governor General in Council "to make laws and regulations for repealing, "amending, or altering any laws or regulations whatever now in force, or "hereafter to be in force, in the territories of India, or any part thereof,

CHAP. I. S. 3.

"and to make laws and regulations for all persons, whether British or "native, foreigners or otherwise, and for all Courts of Justice, whether "established by His Majesty's Charters or otherwise, and the jurisdictions "thereof; and for all places and things whatsover within and throughout the "whole and every part of the said territories, and for all servants of the said "Company within the dominions of Princes and States in alliance with the "said Company, except that he shall not have the power of making any laws "or regulation, which shall in any way repeal, vary, suspend, or affect any of "the provisions of this Act or any provisions of the Acts for punishing mutiny "and desertion of officers and soldiers whether in the service of Her Majesty, "or the said Company; or any provision or Act hereafter to be passed in any-"wise affecting the said Company or the said territories, or the inhabitants "thereof; or any laws which shall in any way affect any prerogative of the "Crown, or the authority of Parliament, or any part of the unwritten laws "or constitution of the United Kingdom of Great Britain and Ireland, "whereon may depend in any degree the allegiance of any person to the "Crown of the United Kingdom, or the sovereignty or dominion of the said "Crown over any part of the said territories."

Accordingly this section declares that "every person," British or native, foreigner or otherwise, who may within British India commit any act contrary to the provisions of the Code, is liable to punishment under it; but the Code has nothing to do with, and does not lay down by what Courts the offenders must be tried. This point is properly provided for by the Procedure Code.

Where it is doubtful whether the offence is committed in British or foreign territory, the question of jurisdiction must be determined by the evidence of witnesses—*Harick Chund Baboo* v. *Mohendronath Haldar and others*, 9 W. R., Cr. R., 29.

"And not otherwise" provides that no person can be punished for any act which amounts to an offence under the Code otherwise than according to the provisions thereof, except when the same act is made punishable by some local or special law. (Commr.'s 2nd Rep., Ss. 537, 538.) So a Revenue Officer should send a case falling under S. 147, Act X, 1859, to a Magistrate for conviction under the Code—*Chota Sadoo Peadah* v. *Bhoobun Chuckerbutty*, 9 W. R, Cr. R., 3.

The Code came into operation on the 1st of January 1862 (Act VI, 1861); and offences committed before that date are not punishable under it; but under the Regulations and Acts then in force (Act XVII, 1862, S. 4).

Punishment of offences committed beyond, but which by law may be tried within the Territories.

3. Any person liable, by any law passed by the Governor General of India in Council, to be tried for an offence committed beyond the limits of the said Territories, shall be dealt with according to the provisions of this Code for any act committed beyond the said Territories in the same manner as if such act had been committed within the said Territories.*

"Within the said territories"—the territorial limits of every country extend to three miles beyond the shore, and the laws of the country apply to acts committed within them. So where certain persons pulled and removed a number of fishing stakes lawfully set in the sea within three miles of the shore, they were held guilty of mischief under the Code—*R.* v. *Kastya Rama*, 8 Bom. R.,

* Act XI, 1872.

Cr. Ca., 63. See also Bom. R., Cr. Ca., 89; 5 Mad. R., App., xiii; *Reg.* v. *Thomson*, 7 B. L. R., O., 1; *Rolet* v. *The Queen*, L. R., 1 P. C. Ca., 198. But the most elaborate discussion of the point is to be found in *Reg.* v. *Elmstone*, 7 Bom. R., Cr. Ca., 104. Westrop, C. J., held—

"Adhering, however, for the present, to the distance of three miles from low-water mark, laid down by the Privy Council in *Rolet* v. *The Queen* as the limit of what is called maritime territory, we must guard ourselves against any supposition that we mean to suggest that the Admiralty Jurisdiction of this Court does not commence until that limit be passed. That jurisdiction commences where the open coast terminates. The coast is not the sea adjacent to the land, but is the land which bounds the sea: it is the limit of the land jurisdiction. This limit varies according to the state of the tide. When the tide is in, and covers the land, the space so covered is sea; when the tide is out, the unoccupied space is land as far as low-water mark. The interval between high and low-water mark must, therefore, be considered as *divisum imperium*, unless the water be, as Sir John Nicholl says, within a county. (See 3 Haggard Adm. Rep., 275, 283.) The case of *Reg.* v. *The Pauline*, 9 Jur., 286; S. C., 3 Notes of Cases, 616, well illustrates this doctrine. The vessel in that case was wrecked on the Pole Sands, near the mouth of the Exe, and was taken possession of while stranded there. She then was lying aground within low-water mark, but the tide had not so ebbed as to far leave her dry. In fact the boat, by means of which she was boarded, floated alongside her. The question was whether she was *wreccum maris*, or a droit of the Admiralty; if the former, she belonged to the Lord of the Manor; if the latter, to the Crown. Judgment was given in favour of the Crown." In the course of it Dr. Lushington said: "I apprehend that the distinction taken in all books, and not only with respect to civil rights, but also with respect to criminal jurisdiction, as the law stood before the statute (4 & 5 Wm. IV, c. 36, s. 22), immediately attaches, namely, that the jurisdiction of the Admiralty subsists at the time when the shore is covered with water; the jurisdiction of the Common Law, and, consequently, the rights of Lords of Manors, at the period when the land is left dry. The doctrine is thus laid down in East's Pleas of the Crown, under the title 'Piracy'—'Upon the open sea-shore it is past dispute that the Common Law and the Admiralty have alternate jurisdiction between high and low-water mark. But in harbours, or below the bridges in great rivers near the sea, which are partly inclosed by the land, the question is often more a matter of fact than of law, and determinable by local evidence. There are, however, some general rules laid down upon this point, which it would be improper altogether to omit. It is plain that the Admiralty can have no jurisdiction in any rivers, or arms or creeks of the sea, within the bodies of counties, though within the flux and reflux of the tide.'" The Central Criminal Court, in a recent case, unanimously held that the Bristol Channel, at a place where it is ten miles wide, between Glamorganshire and Somersetshire, is within the bodies of these two bounding counties, the line of division being, it would seem, *ad medium filum aquæ*. Therefore, a felony committed on board a ship within three quarters of a mile of the Glamorganshire shore was held to be committed within the body of the county of Glamorgan"—*Reg.* v. *Cunningham*, 28 L. J., N. S., Mag. Ca., 66; S. C., 5 Jur., N. S., 202; 1 Bell C. C. R., 66.

Punishment of offences committed by a servant of the Queen within a Foreign allied State.

4. Every servant of the Queen shall be subject to punishment under this Code for every act or omission contrary to the provisions thereof, of which he, whilst in such service, shall be guilty on or after the said 1st day of May, 1861, within the dominions of any Prince or State in alliance with

the Queen by virtue of any treaty or engagement heretofore entered into with the East India Company, or which may have been or may hereafer be made in the name of the Queen by any Government of India.

Sections 2 and 3 provide for the extra-territorial jurisdiction of the Code. Section 4 applies only to a particular class of persons defined in S. 14: but S. 3 embraces people of every denomination. Formerly the Indian Act providing for offences committed outside British India was Act I of 1849. It declared that *all* subjects of the British Government, and all persons in civil and military service of the Government, while actually in such service, and for six months afterwards, and also all persons who had dwelt for six months in British India, were liable for offences committed by them within the territory of every Foreign Prince or State. This Act was referred to the Law Officers of the Crown in 1866, and they considered that in cases of offences committed by *Native* Indian subjects of the Crown in foreign States, the Governor General could not make laws for their punishment in British India, as that power was restrained by 24 & 25 Vic., c. 671; 22 & 28 Vic., c. 17 (Forsyth's Case, 32). In consequence of this opinion Parliament in 1869 passed 32 & 33 Vic., c. 98, empowering the Supreme Government to make laws and regulations for all *Native Indian subjects* of Her Majesty, her heirs and successors, without and beyond as well as within the Indian territories of Her Majesty.

In pursuance of this power, Act XI, 1872, has been passed. It repeals Act I, 1849, and declares that all European British subjects may be dealt with for offences committed within the dominions of Princes and States in India in alliance with Her Majesty; and that all natives for offences committed in *all* places without and beyond the Indian territories under the dominion of Her Majesty may be dealt with as if such offences had been committed in any place within British India, in which the subject may be or may be found. (Ss. 3 & 9, Act XI of 1872.)

An offender, wherever apprehended, is liable to punishment if delivered up to a Magistrate within British India. Accordingly it has been decided, that if a man is given up to the Magistrate within the Company's territorries, the fact that he has been kidnapped from the foreign territory in which he resided is no bar to jurisdiction—Note, *Govt.* v. *Lutloo*, 2 N. A. R., 218.

So if a native British subject in any place outside British India, or a European British subject in any State in alliance with us, commits an act, which is an offence under the Code, he is liable, even though it is not an offence according to the law of the place in which it was committed—*R.* v. *Chill*, 8 Bom. R., Cr. Ca., 92; *R.* v. *Watkins*, 2 Mad. R., 444.

It is not quite clear whether Act XI, 1872 applies to offences committed by natives on the high seas. The words of the Act are certainly wide enough to include such cases; but, on the other hand, there is an absence of the words "on the high seas" as are found in the 9 Geo. IV, c. 74: Nor was any reference made in the statement of "Objects and Reasons" to those Acts of Parliament conferring admiralty jurisdiction on the Courts of this country. (See on this point *R.* v. *Alu Párú*, Perry Or. Ca., 551; *R.* v. *Elmstone*, 7 Bom. R., Cr. Ca., 89; *R.* v. *Kastya Rama*, 8 Bom. R., Cr. Ca., 63.)

European British subjects and foreigners are not liable to punishment under the Code for offences committed on the high seas, more than three miles from the open coast, but the former always, the latter sometimes, are under English law. The procedure in all cases is that of the Procedure Code—*R.* v. *Thompson*, 1 Beng. R., O. Cr., 1; *R.* v. *Elmstone*, 7 Bom. R., Cr. Ca., 89; *R.* v. *Kastya Rama*, 8 Bom. R., Cr. Ca., 63; 5 Mad. R., App., 13.

For the different Acts giving admiralty jurisdiction to the Courts in India, see Appendix C.

Certain laws not to be affected by this Act.

5. Nothing in this Act is intended to repeal, vary, suspend, or affect any of the provisions of the Statute 3 & 4 Wm. IV, c. 85, or of any Act of Parliament passed after that Statute in any wise affecting the East India Company, or the said Territories, or the inhabitants thereof; or any of the provisions of any Act for punishing mutiny and desertion of Officers and Soldiers in the service of Her Majesty or of the East India Company, or of any Act for the government of the Indian Navy, or of any special or local law.

The 3 & 4 Wm. IV, c. 85, expressly prohibits the Governor General in Council from making any law inconsistent with that Act, or any Act of Parliament, passed after that Statute affecting British India; and since that time all Acts of Parliament affecting this country have force of themselves, although no Act of the Legislature may have been passed with reference to their promulgation—N. A. Cir. O. No. 50, 1850.

The Code does not alter, repeal, or suspend any *local* or *special* law. These laws on special temporary grounds make certain acts penal, which could not be properly included in a permanent Penal Code applicable to all persons and extending throughout every portion of British India, and offences under them are by this Section made punishable under the particular law by which they are made penal, and not under the Code. When the facts, proved in evidence, which constitute an offence under a *local* or *special* law, do not amount to an offence under the Code, of course no difficulty can arise as to the law under which punishment may be awarded; but in many cases, though the facts proved amount to an offence under a *local* or *special* law, they are also offences under the Code, and in such cases it may often be a matter of difficulty to determine under what law the offenders should be properly punished. In the *Queen* v. *Kussimuddeen*, 8 W. R., Cr. R., 55, it was decided that when the facts proved constitute an offence under a *special* law, the conviction cannot be upset, on the ground that the same facts amount to an offence under the Penal Code. In the *Queen* v. *Gopal Sein*, 8 W. R., Cr. R., 16, a conviction for abetment of an offence under S. 93, Act XX, 1866, was upheld; but the Judges considered that the defendant would have been more properly convicted under S. 474 of the Code. This judgment, as reported, does not show whether the defendant was liable to punishment under S. 474 of the Penal Code apart from his conviction under the *special* law; or whether the offence under S. 474 of the Penal Code was the major offence, and included the offence of abetment under S. 93, Act XX, 1866; or whether, if the same facts constitute an offence under a *special* law, and also under the Penal Code, a Criminal Court might exercise a discretion as to the law under which punishment should be inflicted. But where a person was convicted under this Code and also under a special law, the High Court (N. W.) set aside the conviction under the special law—*Queen* v. *Hussun Ali*, 5 N. W. Rep., 49. I am inclined to think this decision is not a sound one, and consider that, as stated above, where a person commits an act which amounts to an offence under a local or special law and also under the Code, he should not be convicted under the latter. See on this point a case reported at 3 Mad. Rep., App., xi; *Queen* v. *Bokoo Sheikh*, W. R., Sp. No., Cr., 21.

CHAPTER II.

GENERAL EXPLANATIONS.

Definition in the Code to be understood subject to exceptions.

6. Throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled "General Exceptions," though those exceptions are not repeated in such definition, penal provision, or illustration.

Illustrations.

(*a.*) The Sections, in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(*b.*) A, a Police Officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it."

Expression once explained is used in the same sense throughout the Code.

7. Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

"Gender."

8. The pronoun "he" and its derivatives are used of any person, whether male or female.

"Number."

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

"Man."

10. The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age.

"Person."

11. The word "person" includes any Company or Association, or body of persons, whether incorporated or not.

"Incorporate"—to establish as a corporation by a grant from the Crown, or by Legislative enactment. (Wharton, L. Lex., 244, 470.)

"Public."

12. The word "public" includes any class of the public or any community.

"Queen."

13. The word "Queen" denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.

"Servant of the Queen"

14. The words "servant of the Queen" denote all officers or servants continued, appointed. or employed in India by or under the authority of the said Statute 21 & 22 Vic., c. 106, entitled "An Act for the better government of India," or by or under the authority of the Government of India or any Government.

"British India."

15. The words "British India" denote the Territories which are or may become vested in Her Majesty by the said Statute 21 & 22 Vic., c. 106, entitled "An Act for the better government of India," except the Settlement of Prince of Wales' Island, Singapore, and Malacca.

"Government of India."

16. The words "Government of India" denote the Governor General of India in Council; or during the absence of the Governor General of India from his Council, the President in Council or the Governor General of India alone as regards the powers which may be lawfully exercised by them or him respectively.

"Government."

17. The word "Government" denotes the person or persons authorized by law to administer Executive Government in any part of British India.

"Presidency."

18. The word "Presidency" denotes the Territories subject to the Government of a Presidency.

"Judge."

19. The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of

persons, which body of persons is empowered by law to give such a judgment.

Illustrations.

(*a.*) A Collector exercising jurisdiction in a suit under Act X of 1859, is a Judge.

(*b.*) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(*c.*) A Member of a Punchayet which has power, under Regulation VII, 1816 of the Madras Code, to try and determine suits, is a Judge.

(*d.*) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

"Court of Justice."

20. The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Illustration.

A Punchayet acting under Regulation VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

"Public Servant."

21. The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely—

First. Every covenanted servant of the Queen;

Second. Every commissioned officer in the Military or Naval Forces of the Queen while serving under the Government of India or any Government—

Third. Every Judge;

Fourth. Every Officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court; and every person specially authorized by a Court of Justice to perform any of such duties;

Fifth. Every juryman, assessor, or member of a Punchayet assisting a Court of Justice or public servant;

Sixth. Every Arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh. Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

When a police officer is suspended under S. 8, Act V, 1861, he ceases to be a police officer—8 Beng. R., App, 58.

Eighth. Every Officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience;

Ninth. Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment or contract on behalf of Government, or to execute any revenue process, or to investigate, or to report on, any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government; and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty;

A supernumerary peon appointed by the Board of Revenue under S. 6, Act V, 1863 (B. C.), is a public servant—*Queen* v. *Ramkisto Doss*, 16 W. R., Cr. R., 27.

Tenth. Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town or district.

Illustration.

A Municipal Commissioner is a public servant.

Explanatian 1. — Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

An engineer who receives and pays Municipal monies is a public servant under this clause, even though he may not have the power of sanctioning the expenditure of such monies—*R.* v. *Nantamram Uttamram*, 6 Bom. R., Cr. Ca., 64.

Explanation 2.—Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Registering officers appointed under Act XX, 1866, were public servants (Act XX, 1866, S. 96).

Convict warders appointed under the Jail Rules (403A), whose duty it is to keep prisoners in confinement, are public servants within the scope of cl. 7 of this Section—*Queen* v. *Kalla Chand Mottree*, 7 W. R., Cr. R., 99. So a Naib Nazir is a public servant—*Queen* v. *Mahmood Hossein*, 2 N. W. R., 298. So also is a Putwari—*Queen* v. *Mudsooddeen*, 2 N. W. R., 148.

"Moveable property."

22. The words "moveable property" are intended to include corporeal property of every description, except land and things attached to the earth, or permanently fastened to anything which is attached to the earth.

Everything animate and inanimate, corporeal and capable of being the subject of property, except land and things permanently attached to it, is moveable property.

Corporeal property is property which affects the senses, which may be seen and handled, and excludes from the definition all property which is not an object of sensation, and only exists as a claim, a contract, or a right to obtain money, &c.

It is difficult to define what things are the subject of property. On this point the Authors of the Code remark (P. C. Note N., 73): "But the right of property is itself the creature of the law. It is evident therefore that if the substantive civil law touching this right be imperfect or obscure, the penal law, which is auxiliary to that substantive law, and of which the object is to add sanction to that substantive law, must partake of the imperfection or obscurity.

. . . . . .

As the present state of the civil law causes perplexity to the legislator in framing the Penal Code, so it will occasionally cause perplexity to the Judges in administering that Code. If it be a matter of doubt what things are the subjects of a certain right in whom that right resides, and to what that right extends, it must also be a matter of doubt whether that right has, or has not, been violated. For example, A without Z's permission shoots snipes on Z's ground and carries them away; here, if the law of the civil right grants the property in such birds to any person who can catch them, A has not, by killing them and taking them away, invaded Z's right of property. If, on the other hand, the law of civil right declares such birds the property of the person on whose land they are, A has invaded Z's right of property. If it be a matter of doubt what the state of the civil law on the subject actually is, it must also be a matter of doubt if A has wronged Z or not.

"By the English law pigeons, while they frequent a dovecot, are the property of the owner. By the Roman law they were not so. By the French law they are his property at one time of the year, and not at another. Here it is evident that the taking of such a pigeon, which would in England be a violation of the right of property, would be none in a country governed by the Roman law; and that in France it would depend on the time of the year whether it were so or not.

"A lends a horse to B; B sells the horse to Z, who buys it, believing in good faith that B has a right to sell it. A sees the horse feeding, he mounts

it and rides away with it. Here, if the law of civil rights provides that a thing sold by one who has no right to sell it, shall, nevertheless, be property of a *bonâ fide* purchaser, A has invaded Z's right of property. If, on the other hand, A's right is not affected by what passed between B and Z, A does not commit an infraction of Z's right. . . . . .

"A discovers a mine on land occupied by him. Here, if the civil law assigns all minerals to the occupiers of the land, A violates right of property by appropriating the minerals. But if the civil law assigns all minerals to the Government, A violates the right of property by such appropriation."

The civil law of India consists of portions of the English, Hindoo and Mahomedan law; the Acts and Regulations of the different Governments, where no specific rule exists; the Courts not established by Royal Charter are guided by equity and good conscience. (Reg. III, 1793, S. 21.)

Under the civil law as administered in the mofussil, zemindars are not entitled to the exclusive right of shooting the wild fowl within their zemindaries. (S. D. A., Dec., 1851, 653.)

Under the Mahomedan law carrion and blood cannot be the subject of property. (Baillie, M. L., 93.)

Things attached to the earth, or permanently fastened to anything which is so attached, are not considered moveable property. The first part would include houses whose foundations are sunk in the ground; but apparently not those merely resting on the surface of the earth; the second would include kitchen ranges and grates, windows, &c.; but not carpets, even though they be attached to the floor by nails for the purpose of keeping them stretched out, or curtains, looking-glasses, pictures, or other things which are slightly attached to the walls of a dwelling as furniture. In *Rajchandra Bose* v. *Dharmachandra Bose*, 2 Beng. R., App., 77, Peacock, C.J., said in reference to the Small Cause Court Act:—"We think that huts are not moveable property within the meaning of S. 19 of the Small Cause Court Act, and consequently they cannot be seized in execution. Word 'moveable' in that Section is used in contradistinction to 'immoveable' in S. 20. The word is 'moveable,' not 'removeable,' and that word does not comprehend anything which the judgment-debtor has a right to remove. It means property which is capable of being moved in its existing state."

"Wrongful gain."

23. "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss."

"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

"Wrongful gain" includes wrongful retention of property.

"Wrongful loss" includes the being wrongfully kept out of property.

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

"Dishonestly."

24. Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly."

CHAP. II. Ss. 25—27.

The word "dishonestly" in its legal acceptation applies to every act done by unlawful means with the intention of causing a distribution of property which the law pronounces to be a wrongful distribution. So where the creditors of A complained of their debts to B the master of A, and B, without referring them to the Civil Court, took the law into his own hands, and seizing three cows of A without his consent, handed them over to the creditors to satisfy their claims; B was held to have done it "dishonestly"—*Queen* v. *Mandaree Chowkeedar*, 3 W. R., Cr. R., 2. So also where A, during his lifetime, incurred a debt to B, and after the death of A, B, without having recourse to the Civil Court, unlawfully took some bullocks from C, the widow of A, to satisfy his demand—*Queen* v. *Preonath Banerjee*, 5 W. R., Cr. R., 68; so also where A directed his servant to take B's buffaloes and keep them in his custody—*Tarinee Prasad Banerjee, Petitioner*, 18 W. R., Cr. R., 8.

The defendant, a pledgee of a turban, used it, and for that was convicted of criminal breach of trust, dishonestly using or disposing of property in violation of any direction of law, &c., as to the mode in which any trust affecting such property is to be discharged. The High Court upset the conviction, holding "for either wrongful loss or gain, the property must be lost to the owner, or the owner must be wrongfully kept out of it. The High Court are of opinion that the deterioration of the article by use is not such a loss of property to the owner and the wrongful beneficial use of the property by the prisoner is not such a gain to him. The High Court are of opinion the facts found do not amount to criminal breach of trust." (3 Mad. Rep., App., vii.)

If a person takes property to which he is legally entitled from another, he cannot be said to have done it "dishonestly," although he may have taken it by unlawful means. (Illustration i, S. 378.)

The word "dishonestly" does not apply to acts done in good faith under a claim of right however unfounded, although the doer may have caused wrongfull loss to one party, or wrongful gain to another; at the same time it is a matter of evidence whether they were done in good faith or with a dishonest intent. So where a servant found a party of fishermen poaching on his master's fisheries, and, acting *bonâ fide* in the interest of his master, took charge of the nets and refused to deliver them up to the Police pending the orders of his employers, it was held that it was not done "dishonestly."—*Queen* v. *Nobin Haldar*, 6 W. R., Cr. R., 79; *Queen* v. *Ram Churn Sing*, 7 W. R., Cr. R., 37. See Illustrations, Ss. 378, 415.

"Fraudulently."

25. A person is said to do a thing "fraudulently," if he does that thing with intent to defraud, but not otherwise.

Pollock, C.B.—To defraud may be perhaps best represented by cheat, as in *Hudibras*—

"Doubtless the pleasure is as great
Of being cheated, as to cheat."

To defraud is to cheat a person out of something.

Hill, J.—The crime is cheating a man out of something belonging to himself—*Reg.* v. *Ingham*, 8 Cox, 242. See also S. 17 of the Contract Act IX, 1872.

"Reason to believe."

26. A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing, but not otherwise.

Property in possession of wife, clerk, or servant.

27. When property is in the possession of a person's wife, clerk, or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Explanation.—A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this Section.

"Counterfeit."

28. A person is said to "counterfeit," who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

Explanation.—It is not essential to counterfeiting that the imitation should be exact.

The thing made must bear a resemblance to the object counterfeited, and whether it does so or not is a matter of *fact* to be determined on the evidence. It is not necessary that the imitation should be exact. Such as would impose on ordinary persons is sufficient. In England it has been held that a person counterfeited coin who made blanks quite smooth without head or tail, or any resemblance to a shilling except in color, size and weight, but the master of the mint proved they were somewhat like worn coin. But in another case, where the impression of money was forced on an irregular piece of metal, the offence was not deemed complete. (1 B., p 818.)

"Document."

29. The word "document" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

See note on S. 464 "document."

Explanation 1.—It is immaterial by what means or upon what substance the letters, figures, or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations.

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A Check upon a Banker is a document.

A Power of Attorney is a document.

A Map or Plan which is intended to be used, or which may be used, as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2.—Whatever is expressed by means of letters, figures, or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures, or marks within the meaning of this Section, although the same may not be actually expressed.

Illustration.

A writes his name on the back of a Bill of Exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the Bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature.

"Valuable security."

30. The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration.

A writes his name on the back of a Bill of Exchange. As the effect of this endorsement is to transfer the right to the Bill to any person who may become the lawful holder of it, the endorsement is a "valuable security."

A deed of divorce is a valuable security—*Queen* v. *Azimuddin*, 11 W. R., Cr. R., 15. So a settlement of accounts between A and B in the handwriting of B is a valuable security, although it does not contain any distinct promise to pay,—*Ex parte Kepa Cavaya Saraya*, 2 Mad. Rep., 247.

To render a document a valuable security "it must be made for the purpose stated in the text, and be available for the purpose for which it was made." Thus, a cancelled instrument is not a "valuable security," though by the cancelling of it a legal right may have been extinguished, inasmuch as the instrument upon which the right depended was made void by the act. (Commr.'s 1st Rep., S. 89.)

So a copy of a document is not a valuable security—*R.* v. *Khu Sal* &c., 4 Bom. R., Cr. Ca., 28. See also *R.* v. *Narogopal*, 5 Bom. R., Cr. Ca., 56.

"A will."

31. The words "a will" denote any testamentary documents.

Words referring to acts include illegal omissions.

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

The word "act" includes writing and speaking. If one person with the necessary knowledge or intention should cause the death of another by speaking, he would be guilty of culpable homicide. Thus, suppose Z was in a critical state of health, and A, his heir, had been informed by Z's physicians that Z's recovery absolutely depend on his being kept quiet in mind, and that the smallest mental excitement would be fatal to him. If A went into Z's sick room and told him a pure invention with the intention of killing him, and Z went into fits and died on the spot, A would be guilty of culpable homicide. (Commr.'s 1st Rep., S. 243; P. C. Note M., 59.)

The same reasoning would extend the meaning of the word so as to include any writing, signs, or, in short, any external manifestation.

Acts include illegal omissions. An omission is illegal if it is an offence under the Code, or if it is a breach of some direction of law, or if it is such a wrong as would form a good ground for a civil action. (S. 43.) In support of their intention to treat illegal omissions as acts, the Authors of the Code state,—

"We cannot defend this rule better than by giving a few illustrations of the way in which it will operate. A omits to give Z food, and by that omission voluntarily causes Z's death. Is this murder? Under our rule it is murder if A was Z's jailor directed by law to furnish Z with food. It is murder if Z was the infant child of A, and had therefore a legal right to sustenance, which right a Civil Court would enforce against A. It is murder if Z was a bed-

ridden invalid, and A, a nurse, hired to feed Z. It is not murder if Z is a beggar who has no other claim on A than that of humanity. A omits to tell Z that a river is swollen so high that Z cannot safely attempt to ford it, and by this omission voluntarily causes Z's death. It is murder, if A is a peon stationed by authority to warn travellers from attempting to ford the river. It is murder if A is a guide who has contracted to guide Z. It is not murder if A is a person on whom Z has no other claim than that of humanity. A savage dog fastens on Z, A omits to call off the dog, knowing that if the dog be not called off it is likely to kill Z. Z is killed. This is murder in A if the dog belonged to A, inasmuch as the omission to take proper order with the dog is illegal (S. 289.) But if A be a mere passerby it is not murder." (P. C. Note M., 55.)

"Act." "Omission."

33. The word "act" denotes as well a series of acts as a single act: the word "omission" denotes as well a series of omissions as a single omission.

Each of several persons liable for an act done by all, in like manner as if done by him alone.

34. When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone. (Act XXVII, 1870, S. 1.)

When such an act is criminal by reason of its being done with a criminal knowledge or intention.

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

See note on S. 141, 149.

Effect caused partly by act and partly by omission.

36. Wherever the causing of a certain effect, or an attempt to cause that effect by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration.

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z A has committed murder.

Co-operation by doing one of several acts constituting an offence.

37. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of

those acts, either singly, or jointly with any other person, commits that offence.

Illustrations.

(*a*.) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder, and as each of them does an act by which the death is caused, they are both guilty of the offence, though their acts are separate.

(*b*.) A and B are joint Jailors, and as such, have the charge of Z, a prisoner alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(*c*.) A, a Jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder; but as A did not co-operate with B, A is guilty only of an attempt to commit murder.

Several persons engaged in the commission of a criminal act may be guilty of different offences.

38. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Illustration.

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z, and intending to kill him and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder and A is guilty only of culpable homicide.

"Voluntarily."

39. A person is said to cause an effect "voluntarily," when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration.

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery, and thus causes the death of a person. Here A may not have intended to cause death, and may even be sorry that death has been caused by his act: yet, if he knew, that he was likely to cause death, he has caused death voluntarily.

The term "voluntarily" differs from "intentionally," inasmuch as there is a clear difference between "intent" and "knowledge of likelihood," and a person is said to cause an effect "voluntarily," by doing a thing which he knows to be likely to cause it, though at the same time he may not intend the result. The Authors of the Code, intending that there should be no distinction in general between cases in which a person causes an effect which is an offence designedly, and cases in which he causes it by means which he knows "to be likely to cause it," expressed the difference exactly in order to avoid the necessity of legal fiction in laying a charge by imputing "intent" constructively when the circumstances only imply a knowledge of likelihood. The definition of the term "voluntarily" in the Code agrees in part with the definition of the term "wilfully" in the Digest prepared by the Commissioners

on the Criminal law of England. In Article 2, S. 3, Chap. I, it is laid down:—"A hurt, damage or other evil consequence of an act shall be deemed to have been caused wilfully when the doer of the act intended such consequence to result, or *knew or believed that it was likely* to result, from his act, or when knowing or apprehending that such an evil consequence would probably result from his act, he incurred the risk of running it." This definition differs from that in the text in having a third branch—the knowledge or apprehension that the effect would probably result from the cause. (Commr.'s 1st Rep., S. 103.)

"Offence."

40. Except in the Chapter and Sections mentioned in Clauses 2 and 3 of this Section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV and in the following Sections, namely, Sections 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code or under any local or special law, as is hereinafter defined.

And in Sections 141, 176, 177, 201, 202, 212, 216 and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine (Act XXVII 1870, S. 2).

Before this Section was changed, it was held that as an "offence" was defined to be something made punishable under the Code, it did not extend to acts which were not penal under the Code, but under some *local* or *special* law; and that to such acts none of the provisions of the Code applied, unless extended by special legislative enactment. It was accordingly ruled, that the provisions of S. 70, determining the period after conviction within which fines may be levied, did not apply to offences under a *special* or *local* law—4 W. R., Cr. L., 7, No. 1059, 1865. So also that a person could not be convicted under Chapter V for abetting the commission of an offence under any *local* or *special* law which did not provide for the punishment of abetment—*Queen* v. *Kelimuddeen*, 7 W. R., Cr. R., 53; *Queen* v. *Lall Moonshee*, 7 W. R., Cr. R., 54.

"Special Law."

41. A "special law" is a law applicable to a particular subject.

"Local Law."

42. A "local law" is a law applicable only to a particular part of British India.

"Illegal."
"Legally bound to do."

43. The word "illegal" is applicable to every thing which is an offence or which is prohibited by law, or which furnishes ground for a civil action: and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

As pointed out under S. 32 a person is legally bound to do a thing the omission to do which is an offence prohibited by law or forms a ground

for a civil action. Thus "legally bound" applies to all duties arising out of contract. So where certain Vaccinators were accused, under S. 177, with furnishing false returns, and the Magistrate considered they were not legally bound to furnish such information, it was held that defendants were public servants, and that part of the duties they undertook to perform was to make true returns to their official superior, and were guilty—6 Mad. Rep., 48.

See note under S. 32.

"Injury."

44. The word "injury" denotes any harm whatever, illegally caused to any person in body, mind, reputation or property.

In deciding cases connected with injury, the Courts should bear in mind the following remarks of the Madras High Court:—

"The fallacy of the Civil Judge's reasoning arises from his confounding the wholly distinct judicial notions of injury and damage. To give rise to any action whatever there must be an injury, and an injury is simply an act contrary to law. Here the act was done under the authority of the law itself, and not only is not alleged to be otherwise than legal, but the evidence clearly shows if that were necessary, as it is not, that the order of the Magistrate was a correct order"—*Loami Natudu* v. *Lubramania*, 2 Mad. Rep., 158.

"Life."

45. The word "life" denotes the life of a human being, unless the contrary appears from the context.

"Death."

46. The word "death" denotes the death of a human being, unless the contrary appears from the context.

"Animal."

47. The word "animal" denotes any living creature other than a human being.

"Vessel."

48. The word "vessel" denotes any thing made for the conveyance by water of human beings, or of property.

"Year."

49. Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British Calendar.

"Section."

50. The word "Section" denotes one of those portions of a Chapter of this Code which are distinguished by prefixed numeral figures.

"Oath."

51. The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.

52. Nothing is said to be done or believed in good faith, which is done or believed without due care and attention.

"Good faith."

A Police Officer seeing a horse like one lost by his father tied up in a person's barn, seized it and arrested the person for theft. Held, it was not done in good faith, *i.e.*, with due care and attention—*Queen* v. *Mahomed Fazil Khan*, 10 W. R., Cr. R., 20. See note on S. 499.

CHAPTER III.

OF PUNISHMENTS.

53. The punishments to which offenders are liable under the provisions of this Code are—

Punishment.

First,—Death;

Secondly,—Transportation;

Thirdly,—Penal servitude;

Fourthly,—Imprisonment, which is of two descriptions, namely:

(1.) Rigorous, that is, with hard labour;

(2.) Simple;

Fifthly,—Forfeiture of property;

Sixthly,—Fine.

Death is the only punishment that can be awarded under S. 303 of the Code. In all other cases transportation for life can be substituted for capital punishment. For the procedure to be adopted in awarding and carrying out a sentence of death, see Ss. 53, 380, 383, 398, 401, of the Cr. Pro. Code.

Transportation for life is the only kind of transportation mentioned in the different Sections of the Code, and if the offence is not also punishable with imprisonment for seven years and upwards, none less than for life can be awarded. Thus, murder is punishable with death or transportation for life, but not with imprisonment; and a sentence of transportation for seven or ten years would be clearly illegal—5 W. R., Cr. L., 2, No. 160, 1866. So also a sentence of transportation in lieu of imprisonment for more than ten years for an offence under S. 399 is illegal—9 W. R., Cr. L., 1, No. 47, 1868.

In several Sections the offences may be punished with transportation for life, or imprisonment for a certain period amounting to seven years or upwards. For such offences the Judge may award transportation under S. 59 of the Code in lieu of the same period of imprisonment, when the imprisonment inflicted for any single offence amounts to seven years. See Ss. 57, 59, of this Code and Ss. 22, 50, 51, 52, Cr. Pro. Code.

Penal servitude is a punishment awarded by Act XXIV, 1858, and provided expressly for Europeans and Americans as a substitude for transportation. See also Act XXVII, 1870, S. 3.

Imprisonment is of two kinds, "rigorous" and "simple," and the power of directing the imposition of fetters or labor in irons, which was given under the old law, can form no part of a judicial sentence under the Code—N. A. Cir. O., 1862.

Several offences under the Code are punishable with imprisonment of either description. If rigorous imprisonment is inflicted for such an offence, the fact should be stated explicitly in the sentence, as it is not presumed to have been awarded unless such is distinctly stated. Thus, it has been held

that the words "committed to prison" in S. 301, Criminal Procedure Code (old Code) imply simple imprisonment only—N. A. Cir. O., No. 103, 1862.

Prisoners sentenced to simple imprisonment cannot be lawfully compelled to labor whilst detained in jail. There is, however, no objection to their being employed on any trade or occupation permitted by the Jail Rules, if they of their own free will express their desire for employment—2 W. R., Cr. Cir., 1, No. 2, 1865.

Forfeiture of property is a necessary consequence of a conviction under Ss. 121, 122 of this Code. In all other cases it is optional with the Court to award it or not provided that the offence is punishable with death. Forfeiture of all rents and profits arising from an estate may be awarded as part punishment in cases where the offender is sentenced to transportation, or imprisonment for seven years or upwards. (S. 62.)

In a few cases fine is the only punishment for the offence; but in most cases it is an additional or alternative punishment. Where fine is an additional punishment, it cannot be inflicted as the sole punishment. Thus, if a person convicted of grievous hurt, which is punishable with imprisonment *and* fine, is sentenced to fine only, the sentence is illegal, and imprisonment must be awarded—*Queen* v. *Menazoddin*, 2 W. R., Cr. R., 33. See also the case of the *Queen* v. *Bhoja*, 6 W. R., Cr. R., 54.

By Act VI, 1864, in addition to the punishment described in this Section, offenders are also liable to whipping as an alternative or additional punishment for certain offences. By S. 5 of the same Act "juvenile offenders" who commit any offence which is not by the Penal Code punishable with death, may, whether for a *first* or *any other* offence, be punished with whipping in lieu of any other punishment which they may for such offence be liable under the Code; and by S. 10 this punishment is to be inflicted in the way of school discipline with a light rattan. This Act does not define the meaning of the term "juvenile offender," but the persons included in the term are the same as those mentioned in S. 318, Cr. Pro. Code—*R.* v. *Muhammud Ali*, 8 Bom. R., Cr. Ca., 9. And this is now placed beyond doubt by the words "person under 16 years of age" in S. 316 of the Cr. Pro. Code. See S. 7, Act VI, 1864.

Commutation of sentence of death.

54. In every case in which sentence of death shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

Commutation of sentence of transportation for life.

55. In every case in which sentence of transportation for life shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

When any person has been sentenced to punishment for an offence, the Governor General of India in Council, or the Local Government, may, at any time, without condition, or upon any condition as such person shall accept, remit the whole or any part of the punishment to which he shall have been sentenced (S. 322, Cr. Pro. Code). These are necessary provisions. In

many cases the minimum punishment for an offence is fixed by the Code; and in such a case a Court could not legally award a punishment less than the minimum. Again, in trials by Jury, the question of guilt or innocence is determined by the Jury and not by the Judge, and the latter is bound by their verdict, although he may consider it wrong, and not warranted by the proof adduced for the prosecution.

In such cases the Judge cannot virtually set aside the verdict of the Jury by passing a light sentence on the offender; and must award the punishment proper for the offence of which he has been convicted. But if the Judge considers that the punishment he is bound to inflict in the first case is too severe, or in the second that there are good grounds for objecting to the verdict, he should apply to Government for a mitigation of the sentence—*Queen* v. *Mussamut Aimona*, 1 W. R., Cr. R., 43; 1 W. R., Cr. L., 9; 5 W. R., Cr. L., 2. But see S. 263, Cr. Pro. Code.

See note under S. 59.

As to Penal servitude, see S. 22, Cr. Pro. Code.

Europeans and Americans to be sentenced to penal servitude instead of transportation.

56. Whenever any person being a European or American is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude instead of transportation according to the provisions of Act XXIV of 1855:

Proviso as to sentence for term exceeding ten years, but not for life.

Provided that where an European or American offender would but for such act be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as the Court seems fit; but not for life. (Act XXVII, 1870, S. 3.)

Fractions of terms of punishment.

57. In calculating fractions of terms of punishment, transportation for life shall be reckoned as equivalent to transportation for twenty years.

Offenders sentenced to transportation how to be dealt with until transportation.

58. In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.

By S. 319, Criminal Procedure Code, the place of transportation is not to be specified in the sentence; the Governor General is empowered to appoint a place of transportation within British India, and the Local Government, or some authorized officer, shall direct the removal of persons transported to the place appointed.

By S. 320 such removal is not necessary when the person sentenced is undergoing transportation for a previous offence.

A Court cannot direct in a sentence, that transportation is to take place after a certain portion of the same sentence has been undergone—8 W. R., Cr. L., 5, No. 716, 1867.

In what cases transportation may be awarded instead of imprisonment.

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment.

An officer exercising the powers described in S. 36, Criminal Procedure Code, can award transportation in lieu of imprisonment under this Section—*Queen* v. *Boodhooa*, 9 W. R., Cr. R., 6.

In the *Queen* v. *Prem Chand Oosoul*, 2 W. R., 392, the law regarding this Section was laid down as follows:—

"S. 59 says that, in every case in which an offender is punishable with seven years and upwards, the Court, in sentencing such offender, may award transportation instead of imprisonment. The words in the first clause of the sentence . . . . allude to offenders and to offences, and an offender may be one who commits several offences. But the restriction on the first clause of the sentence is to be found in the concluding clause in the words 'the Court which sentences such offenders, instead of awarding imprisonment, may sentence to transportation.'" The Penal Code must be read together with the Procedure Code. The latter Code, in Chapter XXVI, S. 382 (old Code), lays down that the Court must pass sentence for each offence separately. If this procedure be observed, the Court can sentence to transportation only in a case in which an offence is punishable with a term of seven years. It may, in passing sentence for the offence, commute the imprisonment to transportation. It cannot commute the sentence after a sentence of imprisonment has been passed, and it follows cannot commute it at all, except for offences for which the law awards seven years' imprisonment or upwards. So this section has been held not to apply to the case of a prisoner sentenced to more than seven years' imprisonment made up of consecutive periods of imprisonment each less than seven years—*Queen* v. *Tonooram Malee*, 3 W. R., Cr. R., 44; or to the case of a person imprisoned for ten years, consisting of two consecutive periods of seven years and three years—*Queen* v. *Gour Chunder Roy*, 8 W. R., Cr. R., 2.

Transportation may be awarded in lieu of imprisonment, simple or rigorous—6 W. R., Cr. Cir., 7, No. 9, 1866; it cannot exceed the period of imprisonment that can be legally awarded for the offence—*Queen* v. *Mohanundo Bhundary*, 5 W. R., Cr. R., 16. So where a person was convicted of an attempt at rape, and sentenced under this Section to seven years' transportation, the sentence was set aside on the ground that as rape is only punishable with ten years' imprisonment by S. 511 only five years' imprisonment can be awarded for an attempt to commit such an offence. At the same time it was held, that as rape is punishable with transportation for life—transportation for twenty years (S. 57)—the sentence of seven years' transportation being less than one-half, twenty years would have been legal if passed independent of this Section—*Queen* v. *Joseph Merian*, 10 W. R., Cr. R., 10.

A sentence passed under this Section should be recorded in the following form: "The Court directs, under the provisions of S. 412 (or *other Section* as the case may be), and S. 59 of the Penal Code, the said Z be" (sentence)—*Queen* v. *Prem Chand Oosoul*, 2 W., 392; *Queen* v. *Mohanundo Bhundary*, 5 W. R., Cr. R., 16; 6 W. R., Cr. Cir., 7, No. 9, 1866.

Sentence may be (in certain cases) of imprisonment, wholly or partly rigorous or simple.

60. In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

Sentence of forfeiture of property.

61. In every case in which a person is convicted of an offence for which he is liable to forfeiture of all his property, the offender shall be incapable of acquiring any property except for the benefit of Government until he shall have undergone the punishment awarded, or the punishment to which it shall have been commuted, or until he shall have been pardoned.

Illustration.

A, being convicted of waging war against the Government of India, is liable to forfeiture of all his property. After the sentence, and whilst the same is in force, A's father dies, leaving an estate which, but for the forfeiture, would become the property of A. The estate becomes the property of Government.

Forfeiture of property in respect of offenders punishable with death, transportation, or imprisonment.

62. Whenever any person is convicted of an offence punishable with death, the Court may adjudge that all his property, moveable and immoveable, shall be forfeited to Government; and whenever any person shall be convicted of any offence for which he shall be transported or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his moveable and immoveable estate during the period of his transportation or imprisonment, shall be forfeited to Government subject to such provision for his family and dependents as the Government may think fit to allow during such period.

Forfeiture follows as a necessary consequence a conviction under S. 121, &c., whether entered in the judgment or not: but in all other cases it must be adjudged as part of the sentence. So it has been held that, when an order of forfeiture was subsequently interpolated in the judgment, it was bad—*Zojut-al Nissa* v. *Hunsa Koer*, N. W. R., 55. It should only be imposed in very aggravated cases—*Queen* v. *Muhomed Akbir*, 12 W. R., Cr. R., 17.

Except in cases of treason or offences under Act XI, 1857, Government takes the estate forfeited subject to all *bonâ fide* charges up to conviction, but if any fraudulent transfer is made before it it will not avail. So where a person

was convicted of felony and after the act, but before indictment, he offered to repay prosecutor, who refused. Subsequently he made a voluntary settlement of his property in favour of his wife and children. Held it was bad as made in apprehension of conviction, and to defeat the right of the Crown—*In re Saunder's Estate*, 9 Cox., Cr. C., 279.

In a case of abortion, the Judge, when passing sentence, directed that certain property given by one prisoner to the other as payment for procuring the medicines necessary to procure the abortion, were forfeited to Government. The order was upset on appeal, as the prisoners had been sentenced to only three years' imprisonment—*Queen* v. *Kripamoyee and another*, 8 W. R., Cr. R., 35. As to forfeiture for treason, see note to S. 121.

Amount of fine.

63. Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

In the case of the *Queen* v. *Abdoor Ruhman*, 7 W. R., Cr. R., 37, defendant petitioned the High Court, on the grounds that a fine of Rs. 500 imposed on him by a Magistrate was excessive. The Court (Jackson, J.) held: "It is not shown in any way what the income of the petitioner was, or why the fine is excessive. An application on such a ground should be supported by proof of what the income of the petitioner was, and that the fine was altogether disproportioned to that income, and oppressive. The description of fine which it was the object of this Section to prohibit, was a fine which it would be impossible or very difficult for the accused person to pay, or wholly disproportioned to the character of the offence. And to this it may be added, that it is doubtful whether the section cited has any application to fines inflicted by a Magistrate. By its terms it applies only to cases where the amount of fine is unlimited by law. Now the power of a Magistrate to fine is, in all cases, under the Penal and Criminal Procedure Code, limited to Rs. 1,000, and it is only the Court of Session or the High Court that can inflict fines to an unlimited amount."

By S. 44 of old Procedure Code, a Criminal Court might direct that a fine, or any portion of it, not exceeding the loss caused to the person who had suffered the offence, and any special damages of a pecuniary nature that might have resulted from it, and any expenses incurred in the prosecution, might be paid to the complainant.

In connection with this Section it was held that compensation could only be granted under the circumstances specifically mentioned; and that bodily suffering was no ground for compensation—3 W. R., Cr. L., 18, No. 69, 1865. So also an order directing a portion of a fine to be paid to an Ameen for the purpose of defraying his expenses in restoring landmarks destroyed by the defendants was declared beyond the scope of the Section—*Queen* v. *Moorut Lall*, 6 Cr. R., W. R., 93.

The present law is much more general. It declares when any Court of appeal or revision or of first instance imposes a fine, it may be applied in compensation of the expenses of the prosecution, and in compensation for the offence complained of, if the Court thinks it can be compensated by money. Such payment shall be made as the Court thinks fit to or for the benefit of the complainant or the person injured, or both. If the fine be awarded by a Court whose decision is subject to appeal or revision, the amount awarded shall not be paid until the period prescribed for the presentation of the appeal has *elapsed*, or if an appeal be presented, till after the decision of the appeal (S. 308, Cr. Pro. Code).

By S. 4, Act V of 1847 (B. C.), the provisions of Ss. 63 to 70, inclusive, are extended to all fines imposed by any future Act of the Bengal Council. And by Act I of 1868, the same are extended to all Imperial Acts passed after it, unless they contain words expressly to the contrary.

Before awarding compensation, the Judge is bound to find, as a matter of fact, that the complainant has suffered loss, and then assess the amount accordingly—4 W. R., Cr. L., 4, No. 297, 1865; and when compensation is awarded to more than one individual, the order should distinctly declare the amount to be paid to each of them—3 W. R., Cr. L., 20, No. 777, 1865.

For power of Judges and Magistrates to fine, see Cr. Pro. Code.

Sentence of imprisonment in default of payment of fine.

64. In every case in which an offender is sentenced to a fine, it shall be comptent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

A Court passing a sentence of fine can direct by the sentence that, in default of payment, the offender shall be imprisoned for a certain period in excess of any other imprisonment awarded, or to which he may be liable under a commutation of the sentence.

The meaning of this last clause is not quite clear, as, by Ss. 54, 55, it is only when a person had been sentenced to death or transportation for life that the Government is enabled to commute a sentence at all. Authorizing a Judge to award additional imprisonment in such cases would be granting a power which would seldom be exercised. If the first part of the Section be limited by the last, it would seem that a person sentenced to transportation under the provisions of S. 59, or to penal servitude under S. 56 and fine, would not be liable to additional imprisonment in default of payment of the fine in any case; though a person who suffered the same period of imprisonment would be exposed by the provisions of this Section to additional imprisonment. But see S. 322, Cr. Pro. Code.

The additional imprisonment in default of fine cannot be awarded in *transportation*—*Queen* v. *Srimunto Kotal*, 7 W. R., Cr. R., 31.

Limit of term of imprisonment for default in payment of fine, when the offence is punishable with imprisonment as well as fine.

65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine, shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

In every case punishable under *any law* in force for the time being with imprisonment as well as fine, in which fine is awarded, the Courts are guided by this and the last Sections, provided that where imprisonment has been awarded as part of the substantive sentence, the period awarded in default of payment of *fine* shall not exceed one-fourth the period such Magistrate is competent to inflict for the offence otherwise than as imprisonment in default of payment of fine.

But where a person is sentenced to fine only, the Magistrate may award such imprisonment in default of fine as is allowed by law, provided the amount does not exceed his powers under the Procedure Code (S. 309, Cr. Pro. Code).

Description of imprisonment for such default.

66. The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

Term of imprisonment for default in payment of fine, when the offence is punishable with fine only.

67. If the offence be punishable with fine only, the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty Rupees, and for any term not exceeding four months when the amount shall not exceed one hundred Rupees, and for any term not exceeding six months in any other case.

It does not appear to what *kind* of imprisonment a person confined under this Section is liable, as S. 66 cannot apply to such a case. The High Court (Bombay) held, that as the imprisonment under S. 291 was simple, that imprisonment in default of payment of a fine levied under S. 290 must be simple, and not rigorous—*R.* v. *Santu* bin *Lakhappa Kore*, 5 Bom. R., Cr. Ca., 45.

Such imprisonment to terminate upon payment of the fine.

68. The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

Termination of such imprisonment upon payment of proportional part of fine.

69. If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration.

A is sentenced to a fine of one hundred Rupees, and to four months' imprisonment in default of payment. Here, if seventy-five Rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five Rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty Rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty Rupees be paid or levied at the time of expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

Magistrates and Subdivisional Officers should be very careful in all cases in which a person is sentenced to imprisonment in default of fine, that if the fine or a proportional part of it be paid or levied, immediate information be given to the officer in charge of the Jail, so that the prisoner may not be kept in illegal confinement. (B. G. L., No. 1060T, 1864.)

70. The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

Fine may be levied within six years or at any time during the term of imprisonment.

Death of offender not to discharge his property from liability.

By Ss. 68, 69, a person suffering imprisonment in default of payment of fine is entitled to his release when the whole amount or a proper proportional part of it has been either levied or paid. But the imprisonment incurred is not considered as a substitute for the payment of fine. On this point the Authors of the Code state (P. C. Note A, 7): "But we do not mean that this imprisonment shall be taken in full satisfaction of the fine; we cannot consent to permit the offender to choose whether he will suffer in his person or in his property . . . . We therefore propose that the imprisonment which an offender has undergone shall not release him from the pecuniary obligation under which he lies. His person will indeed cease to be answerable for the fine. But his property will for a time continue to be so." So it has been held by the High Court, that the imprisonment which a Court is empowered to inflict on default of payment, is only a punishment for default, and not a substitute for the fine imposed—3 W. R., Cr. L., 19, No. 726, 1865; *id.*, 21, No. 789, 1865; *Queen* v. *Modhoo Soodun Day*, 3 W. R., Cr. R., 61.

By S. 307, Criminal Procedure Code, the Court which sentences an offender may issue a warrant to levy the amount by distress and sale of his moveable property, whether or not the offence be punishable with fine only, or whether or not the sentence directs that the offender shall be imprisoned in default of payment. Such warrant may be executed within the jurisdiction of the Court that issued, and without it when endorsed by the Magistrate of the District in which the property is situated.

S. 307 does not apply to cases under any local or special law, in which there was special procedure for the recovery of any fine, but it does to all cases in which no such procedure is laid down, and to all fines not levied when the Procedure Code came into force; but which might have been levied if it had been in force when they were imposed.

The warrant may be issued either by the Judge or Magistrate who passes the sentence, or by his successor in office. (S. 307, Cr. Pro. Code.)

An order of the Court of first instance directing the levy of a fine is not open to appeal, and an Appellate Court acts without jurisdiction in directing the suspension of the order till the period of appeal may have passed; or, if an appeal has been preferred, till the appellate decision may be known—2 W. R., Cr. L., 13, No. 134, 1856. See also the case of the *Queen* v. *Modhoo Soodun Day*, 3 W. R., Cr. R., 61.

The warrant to levy a fine should be directed to a Police officer, and should state clearly that the fine shall be levied only by distress and sale of any moveable property belonging to the offender. It should also contain mention of the time of sale, and the date when it should be returned to the Court whence it was issued. If there be no property found, the warrant should be returned on the day fixed for submission with an endorsement to that effect. If *distraint* be *found*, and no third party lays claim to the property seized, the Police are empowered to sell, without further reference to the Judicial Officer,

within the time specified in the warrant, and after sale the warrant should be returned with a statement showing the goods sold and the amount obtained for them.

If a claimant appear, the question of ownership must be determined by the Judicial Officer, and not by the Police—H. C. Cir. No. 8, 1864. It is, however, a matter of doubt whether a Judicial Officer is bound to decide on claims to property attached in pursuance of the levy of fines. Adopting the reasoning laid down by a Full Bench in the case of the *Queen* v. *Chumroo Roy*, 7 W. R., Cr. R., 35, it would appear that, in cases where the law does not expressly empower a Judicial Officer to decide on such claims, he would commit no error in law by refusing to adjudicate, as the claimants are not barred by the sale, and may bring a suit in the Civil Court against the purchasers to establish their right.

If, at any time subsequent to the return of the first warrant, and within six years from the passing of the sentence, or at any time within the period of imprisonment, if the offender has been sentenced to more than six years, the Court, from information gained in any way, has reason to believe that any moveable property belonging to the offender is within its jurisdiction, it should issue a second warrant for the attachment and sale of such property in the manner provided for issuing the first warrant. If, in the meantime, the offender dies, then any property belonging to him, moveable or immoveable, within the district where he has been tried, or any other district, is liable to attachment and sale in satisfaction of any portion of the fine remaining unpaid at the time of his death—4 W. R., Cr. L., 6, No. 971, 1865; 3 W., 51, Cr. Cir. No. 8, 1864; B. G. L., No. 2201, 1865.

The Bombay High Court, on the other hand, has ruled, immoveable property cannot be followed after death. Thus, "the law has provided for the distress and sale of moveable property only, and the Court cannot point out any way by which the immoveable property may be made liable for the fine. Under these circumstances, the Court considers that immoveable property should not be proceeded against after the death of the offender"—*R.* v. *Lalu Kunwar*, 5 Bom. Rep., Cr. Ca., 63.

Limit of punishment of offence which is made up of several offences.

71. Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Illustrations.

(*a.*) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(*b.*) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

By Cl. 3, S. 454 of the Procedure Code, if several acts, of which one or more than one constitute an offence, form, when combined, an offence under the provisions of any law in force for the time being, by which offences are defined or punished, a person who does them may be charged with every offence which he may have committed; but he must not receive for such offences collectively a punishment more severe than that which might have been awarded by the Court trying him for any one of such offences or for the

offence formed by their combination. The illustrations to this section embody the best decisions of the High Court. They are—

(*n.*) A commits house-breaking by day, with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under Ss. 454 and 497, Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under S. 497 only.

(*o.*) A robs B, and, in doing so, voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under Ss. 323, 392, and 394 of the Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under S. 392 or 394 only.

(*p.*) A entices B, the wife of C, away, and then commits adultery with her. A may be charged separately, and convicted of offences under Ss. 498 and 497, Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under S. 497 only.

By S. 454, Cl. 1, Criminal Procedure Code, if in one set of facts so connected together as to form the same transaction more offences than one are committed by the same person, he may be charged with, and tried for, every such offence at the same time; and by S. 314 of the same Act he can be sentenced to the several penalties prescribed; such penalties, when consisting of imprisonment or transportation, to commence the one after the expiration of the other. Provided that in no case shall a person be sentenced to imprisonment for a longer period than 14 years, and if the case be tried by a Magistrate (in a Regulation district) that the punishment shall not in the aggregate exceed twice the amount he can ordinarily inflict. The following cases illustrating this case are given under S. 454 of the Procedure Code.

(*a.*) A rescues B, a person in lawful custody, and causes grievous hurt to C, a constable in whose custody B was. A may be separately charged with, convicted of, and punished for, offences under Ss. 225 and 333, Indian Penal Code.

(*b.*) A has in his possession several counterfeit seals with the intention of committing several forgeries. A may be separately charged with, convicted of, and punished for, the possession of each seal for a distinct forgery under S. 473, Indian Penal Code.

(*c.*) A, with intent to cause injury to B, institutes proceedings against him, knowing there is no just or lawful ground for such proceedings. A also falsely charges B with having committed an offence. A may be separately charged with, convicted of, and punished for, two offences under S. 211, Indian Penal Code.

(*d.*) A, with intent to injure B, brings a false charge against him of having committed an offence. On the trial, A gives false evidence against B. A may be separately charged with, convicted of, and punished for, offences under Ss. 211 and 194 or 195, Indian Penal Code.

(*e.*) A, knowing that B, a female minor, has been kidnapped, wrongfully confines her and detains her as a slave. A may be separately charged with, convicted of, and punished for, offences under Ss. 368 (read with 367) and 370, Indian Penal Code.

(*f.*) A, with six others, commits the offence of rioting, grievous hurt, and of assaulting a public servant engaged in suppressing the riot. A may be separately charged with, convicted of, and punished for, offences under Ss. 147, 325 and 152, Indian Penal Code.

(*g.*) A criminally intimidates B, C, and D at the same time. A may be separately charged with, convicted of, and punished for, each of the three offences under S. 506, Indian Penal Code.

(*h.*) A intentionally causes the death of three persons by upsetting a boat. A may be separately charged with, convicted of, and punished for, three offences under S. 302, Indian Penal Code.

The same rule should be followed in cases where a person is convicted for rape and assault or subsequent imprisonment, or for forgery of a bill of exchange and for subsequent perjury in support of its genuineness—1 W. R., Cr. Cir., 2, No. 16, 1864; or for kidnapping from lawful guardianship and selling for the purpose of prostitution—*Queen* v. *Doorga Dass*, 7 W. R., Cr. R., 104; or for rioting armed with deadly weapons and stabbing a person on whose premises the riot took place—*Queen* v. *Callachand and others*, 7 W. R., Cr. R., 60; or for rioting, causing hurt, and grievous hurt, where the hurt and grievous hurt are caused to different persons—*Queen* v. *Azgar*, 5 W. R., Cr. R., 10.

Whipping is one of the several punishments prescribed, and can be administered along with imprisonment for two separate offences. So it has been held, contrary to the decision in the case of *Nunssir* v. *Chunder*, 9 W. R., Cr. R., 41, that where a person is convicted at the same time of two or more offences,

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he may, in addition to the punishments prescribed in the Penal Code for the same, be whipped, for one of them—*Moniruddin Shamadar* v. *Gour Chunder Shamadar*, 15 W. R., Cr. R., 89.

In addition to the two cases mentioned above there is a third, where there is only a single act; but it falls within two separate definitions of offences. In this cast under Cl. 2, S. 454, the offender is liable to be charged with each of the offences; but he must not receive a more severe punishment than could be awarded by the Court for either.

(*i.*) A commits mischief by cutting down a tree in a Government forest. The tree overhangs the bank of a river, and falls into the stream. A commits theft by having severed the tree and by floating it down the river to his village, where he sells it. A may be separately charged with, and convicted of, offences under Ss. 476 and 379, Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under S. 379 only.

(*j.*) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under Ss. 352 and 323, Indian Penal Code, but the Court which tries him may not inflict a more severe sentence than if it had convicted him under S. 325 only.

(*k.*) A wrongfully kills a buffalo worth sixty rupees belonging to B, and then takes away the carcass in a manner amounting to theft. A may be separately charged with, and convicted of, offences under Ss. 429 and 379, Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under S. 429 only.

(*l.*) Several stolen sacks of corn are made over to A and B, who know they are stolen property. A and B therefore assist each other to conceal the sacks at the bottom of a grain pit. A and B may be separately charged with, and convicted of, offences under Ss. 411 and 414, Indian Penal Code; but the Court which tries them may not inflict a severer sentence than if it had convicted them under one of those sections only.

(*m.*) A uses a forged document in evidence in order to convict B, a public servant, of an offence under S. 167. A may be separately charged with, and convicted of, offences under Ss. 471 (read with S. 466) and 196, Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under one of those sections only.

This Section has made some important changes. From illustration (*n*) it appears if A committed house-breaking by day in order to commit theft, and also committed theft, convictions under Ss. 380 and 454 would be legal—*Queen* v. *Anvarkhan*, 9 Bom. R., Cr. Ca., 172—subject to the restrictions of the *Section*, while under the old Procedure a conviction only for the *major* offence could be had. It has been held that house-breaking includes theft in a house—*Queen* v. *Imakoch*, 2 W. R., Cr. R., 63; *Queen* v. *Marsalim Daoudh*, 6 W. R., Cr. R., 82; *Queen* v. *Chylan Bowree*, 5 W. R., Cr. R., 49. So mischief includes criminal trespass—*Queen* v. *Kalloo Sing*, 8 W. R., Cr. R., 54; so causing grievous hurt includes house-trespass when causing it—*Queen* v. *Bassoo Rannah*, 2 W. R., Cr. R., 29; so in case of lurking house-trespass at night with theft—*Queen* v. *Ram Churn Kairoo*, 6 W. R., Cr. R., 49; so robbery and hurt caused in committing it—*Queen* v. *Mottee Kore*, 2 W. R., Cr. R., 1; so theft includes mischief to the property stolen—*Queen* v. *Bochuck Aheer*, 6 W. R., Cr. R., 5; so in lurking house-trespass with aggravated circumstances, offences under S. 458 or 489 are the greater—*Queen* v. *Bhuttoo Dome*, 9 W. R., Cr. R., 5; so it has been held that being members of an unlawful assembly armed with deadly weapons covered house-trespass and mischief—*Queen* v. *Suroop Napit*, 3 W. R., Cr. R., 54; so culpable homicide covered being a member of an unlawful assembly—*Queen* v. *Rubbeoollah*, 7 W. R., Cr. R., 13; so rioting includes being a member of an unlawful assembly—*Meelan Khalifa* v. *Dwarkanath Gooptoo*, 1 W. R., Cr. R., 7. So all the false statements in one deposition only form one offence as regards punishment. See Note on S. 193.

Punishment of a person found guilty of one of several offences, the judgment stating that it is doubtful of which.

72. In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the

offender shall be punished for the offences for which the lowest punishment is provided if the same punishment is not provided for all.

By S. 455 of the Criminal Procedure Code, if a single act or set of acts is of such a nature that it is doubtful which of several offences that can be proved it will constitute, the accused person may be charged with having committed any such offence, and any number of such charges may be tried at once, or he may be charged in the alternative with having committed some one of the offences.

According to S. 461, Criminal Procedure Code, a Court, in passing judgment, if it be doubtful under which of the two Sections or under which of the parts of the same Section the offence falls, shall distinctly express the same and pass judgment in the alternative according to the present Section, which was framed to prevent persons from evading punishment on a technical objection to the offence held to be proved; and provides for the punishment of persons in cases where either the law or the fact is so doubtful that the Judge cannot say what offence has been committed.

In the case of the *Queen* v. *Mussamut Zameeran*, 6 W. R., Cr. R., 65, a Division Bench (Campbell, and Norman, JJ.), in order to determine in what cases alternative judgments were valid, referred the following point to a Full Bench for decision:—"We are disposed to think that, under S. 381 of the Criminal Procedure Code, the Court in passing judgment must distinctly specify the *offence* of which the accused is convicted, and that it is only when the same *facts* constitute or form an offence under one or other of two Sections, or under one Section, and the Court from imperfect information is unable to say under which head the offence falls that it can pass judgment in the alternative. We doubt whether a finding that A B on two different days made inconsistent statements on oath, is a sufficient specification of the offence."

On this point Peacock, C.J., in delivering the opinion of the Court, held: "I have no doubt that there may be an alternative finding as well in a case in which the evidence proves the commission of one of two offences falling within the same Section of the Penal Code, and it is doubtful which of such offences is proved, as in one in which the evidence proves the commission of an offence falling within one of two Sections of the Penal Code, and it is doubtful which of such Sections is applicable."

See note on S. 71.

Solitary confinement.

73. Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole according to the following scale, that is to say—

A time not exceeding one month, if the term of imprisonment shall not exceed six months.

A time not exceeding two months if the term of imprisonment shall exceed six months and be less than a year.

A time not exceeding three months if the term of imprisonment shall exceed one year.

By S. 20, Criminal Procedure Code, no sentence of solitary confinement can be passed by any Judicial Officer inferior to an officer exercising the powers of a Magistrate of the second class.

Limit of solitary confinement.

74. In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment award, with intervals between the periods of solitary confinement of not less duration than such period.

A sentence inflicting solitary confinement for the whole imprisonment is illegal, though not more than fourteen days is awarded—*In the matter of Nyau Suk*, 3 Beng. R., Cr. C., 49.

Punishment of persons convicted, after a previous conviction, of an offence punishable with three years' imprisonment.

75. Whoever having been convicted of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of those Chapters with imprisonment of either description for a term of three years or upwards, shall be subject for every such subsequent offence to transportation for life or to double the amount of punishment to which he would otherwise have been liable for the same; provided that he shall not in any case be liable to imprisonment for a term exceeding ten years.

The meaning of this Section is that when an offender, being punished for an offence under Chap. XII or Chap. XVII of the Code, again, *after* his release from prison, commits a similar description of offence, or an offence under the same Chapter, he is liable to increased punishment, on the grounds that the punishment undergone has had no effect. But when the previous conviction has taken place only a short time before, and the imprisonment has not been undergone, and no time has been given for reformation, this Section does not apply—*Queen* v. *Pubon*, 5 W. R., Cr. R., 67. So this Section does not apply to offences committed at one and the same time—*Queen* v. *Jhoomuck Chamar*, 6 W. R., Cr. R., 90. Nor to offences committed in succession unless the latter is *subsequent* to a conviction and undergoing sentence on the first—*Reg.* v. *Sukya Valaee Kooji*, 5 Bom. R., Cr. Ca., 36.

Both offences must have been committed after the 1st of January, 1862, and both convictions must have been under the Code, and not under any *local* or *special* law—*Queen* v. *Hurpaul*, 4 W. R., Cr. R., 9; *Queen* v.

Muluch Chund, 3 W. R., Cr. R., 17; *Reg.* v. *Cushya Bin Yeasu*, 4 Bom. R., Cr. Ca., 11.

The offender may be tried by any Court which would have had jurisdiction over the offence if there had been no previous offence committed. The Court, in awarding punishment under this Section, is limited to its ordinary jurisdiction. Thus, a Magistrate with full powers cannot award more than two years and six months in default of fine under this Section in any case—2 W. R., 109, Cr. L., No. 885, 1863. Nor can an officer acting under S. 36, Criminal Procedure Code, inflict more than seven years.

By S. 439, Criminal Procedure Code, if the accused person has been previously convicted of any offence, and it is intended to prove the previous conviction for the purpose of affecting the punishment to be awarded, the fact of the previous conviction must be stated in the charge. If it is omitted, it may be added at any time before the sentence is passed; but not afterwards. So where a previous conviction was not charged or added before sentence, it was held that the Judge was wrong in referring to it as a ground for enhancing punishment—*Queen* v. *Rajcoomer Bose*, 19 W. R., Cr. R., 41.

By S. 326, Criminal Procedure Code: "When a previous conviction or acquittal is to be proved against an accused person, application shall be made to the officer in whose custody the records of such trial may be. It shall not be necessary to produce the record of the conviction or acquittal of such accused person or a copy thereof; but an extract may be produced in proof of such conviction or acquittal, if *certified* under the hand of the clerk of the Court, or other officer having the custody of the records of the Court in which such conviction or acquittal was had, or by the deputy of such clerk or officer, to be a copy of the charge, finding and sentence as the case may be."

Thus the proper way of proving a conviction is—a certificate or the record shall be produced, and the identity of the person established by direct evidence. A mere *kyfyat* is not sufficient—*Queen* v. *Nuzee Nushya*, 15 W. R., Cr. Ca., 52; *Queen* v. *Sheikh Rumzan*, 15 W. R., Cr. R., 53. In case no witness can be obtained who was present at the conviction, it may be proved by putting in a certificate of the conviction and evidence of the jailor (with a warrant of commitment signed properly and otherwise agreeing with the conviction) that prisoner was received under the warrant—*Reg.* v. *W. Levy*, 8 Cox., Cr. Ca., 73. A verdict of jury or opinion of assessors is necessary on a charge of previous conviction—*Queen* v. *Esan Chunder Dey*, 21 W. R., Cr. R., 40.

This Section does not apply to cases of attempts or abetments not specially made offences within the Chapters mentioned above—*Queen* v. *Damu Haree*, 21 W. R., Cr. R., 35.

CHAPTER IV.*

GENERAL EXCEPTIONS.

Act done by a person bound, or by mistake of fact believing himself bound by law.

76. Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Illustrations.

(*a.*) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(*b.*) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

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* The following Chapters, namely IV (*General Exceptions*), V (*Of Abetment*), and XXIII (*Of Attempts to commit Offences*), shall apply to offences punishable under the said Ss. 121A, 294A and 304A, and the said Chapters IV and V shall apply to offences punishable under the said Ss. 124A and 225A. (S. 12, Act XXVII, 1871.)

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This Chapter has been formed in order to obviate the necessity of repeating in every Section a considerable number of limitations. Some limitations refer only to a single Section, or to a very small class of Sections. These are called special exceptions, and are appended to the Sections they modify. But there are other exceptions which are common to all the Sections of the Code, and to prevent the repetition of these under every Section a separate chapter has been formed. These are called general exceptions. (P. C. Note B, 15.)

By S. 439, Criminal Procedure Code, it is unnecessary to deny the existence of special or general exceptions in the charge.

By S. 105, Act I of 1872, when a person is accused of an offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code, or within any special exception or provision contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court *shall* presume the absence of such exceptions.

Illustrations.

(*a.*) A, accused of murder, alleges that by reason of unsoundness of mind he did not know the nature of the act.

The burden of proof is on A.

(*b.*) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(*c.*) Section three hundred and twenty-five of the Indian Penal Code provides, that whoever, except in the case provided for by Section three hundred and thirty-five, voluntarily causes grievous hurt, shall be subject to certain punishment.

A is charged with voluntarily causing grievous hurt under section three hundred and thirty-five.

The burden of proving the circumstances pending the case under section three hundred and thirty-five lies on A.

From the words "shall presume the absence of such circumstances" it is clear that the *onus* of proving all exceptions lies on the person urging them. But at the same time the following remarks of the High Court in Cir. No. 1, 1867 (7 W. R., Cr. Cir., 1) should be borne in mind by committing officers:

"S. 225, Criminal Procedure Code (S. 195 of present Pro. Code) "enacts, that when a Magistrate finds there are not sufficient grounds "for committing the accused person to take his trial before the Court of "Session, or for remanding him, he shall discharge him, unless it shall appear "to the Magistrate that such person shall be put upon his trial before himself, "in which case he shall proceed under Chap. XIV of the said law."

"By S. 40 of the Penal Code, the word 'offence' denotes a thing made "punishable by that Code, and by S. 6, every definition of an offence shall be "understood subject to the exceptions contained in Chapter entitled 'general "exceptions.' If therefore the evidence given before a Magistrate upon a "preliminary enquiry relating to an offence exclusively triable by the Court "of Session satisfies him that the act or omission charged against the accused "is brought within one of the general exceptions of the Penal Code, the "Magistrate would be wrong in committing the accused person for trial. "This would be the case whether the evidence by which the Magistrate is so "satisfied is that which arises from the examination and cross-examination of "the witnesses called in support of the prosecution, or of witnesses summoned "on behalf of the accused under the provisions of S. 207 of the Criminal "Procedure Code."

This Circular does not apply to cases in which, upon preliminary enquiry, the question arises whether the accused, at the same time when he committed the offence, was of unsound mind. In such cases the Magistrate must commit the accused. (S. 424, Cr. Pro. Code.)

It would appear that although the *onus* is thrown on the defendant in all cases where exceptions are adduced, that it is different when the only evidence produced is the confession of the accused which contains mention of circumstances amounting to a special or general exception. In the case of the

Queen v. *Chokoo Khan and another*, 5 W. R., Cr. R., 70, it was laid down that when a conviction rests solely on a confession, it must be taken as a whole, and the Court trying the offender cannot reject any part of it. So where a person confessed to having committed culpable homicide under circumstances which brought the offence within Exception I of S. 300 of this Code, and the Judge rejecting that portion of the confession containing the extenuating circumstances as untrustworthy, convicted the accused on his confession for murder, the conviction was set aside for one of culpable homicide not amounting to murder—*Queen* v. *Sheik Boodhoo*, 8 W. R., Cr. R., 38. So where the persons accused admitted to have taken part in the commission of the offence under compulsion, the High Court stated that such a confession did not amount to an admission of guilt, and on such a confession alone no person ought to be convicted—*Queen* v. *Kristo Mundul and others*, 7 W. R., Cr. R., 8. On this last point the decision of the High Court is at variance with the opinion of the Commissioners appointed to report on the Penal Code. They say, "If a female be accused, let us say of homicide, would confess to the fact, but would justify it on the ground that she did it to save herself from violation, without being able to save herself by other means . . . . she would have to give proof of circumstances evidencing the intent of the man and the necessity of the act to prevent him accomplishing his purpose. (1st Rep., S. 147). Nor does it seem to agree with rule laid down by the Evidence Act referred to above.

Act of Judge when acting judicially.

77. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

Act XVIII of 1850 declares, that no civil action lies against a Judge acting judicially for anything done or ordered to be done by him in good faith, even though he may have had no jurisdiction in the matter. This Section declares the non-liability of the Judge to a criminal charge in similar cases. As to the difference between English and Indian law on the protection given to Judicial Officers, see Wharton's Legal Maxims, 53.

Act done pursuant to the judgment or order of a Court of Justice.

78. Nothing which is done in pursuance of, or which is warranted by, the judgment or order of a Court of Justice, if done whilst such judgment or order remains in force, is an offence notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

Act XVIII, 1850, declares Ministerial Officers are not liable to a civil action for executing any warrant or order of a Court of Justice, though the Court may possess no jurisdiction in the matter, if they would be bound to execute it if within jurisdiction.

This Section only holds Ministerial Officers and others blameless for acts committed in executing the orders of a Court, when the Officers after due care and attention consider that the Court possesses jurisdiction. So that Ministerial Officers are more liable to a criminal prosecution than a civil action for acts done in the execution of their duty.

Ministerial Officers who act beyond the scope of their instructions in carrying out the orders of a Court can claim no protection under this Section. So where two peons of a Civil Court arrested a judgment-debtor, who had been

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cited to give evidence in a criminal case, within the precincts of the Criminal Court, after they were informed by the Officers of the Court that the judgment-debtor was entitled to protection from arrest while going and coming from the Court, they were held to have no protection under this Section—*Thacoordass Nundee* v. *Shunkur Roy*, 3 W. R., Cr. R., 53. So where a bailiff, in executing a process of execution against the moveable property of a judgment-debtor, exceeded his instructions, and broke open the door and gate of the judgment-debtor's house to obtain the property—*J. Anderson* v. *J. McQueen*, 7 W. R., Cr. R., 12.

Police Officers are specially protected for acts done in their public capacity. By S. 43, Act V, 1861, when any action or prosecution shall be brought against any Police Officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate.

See S. 300, Excep. 3.

Act done by a person justified, or by mistake of fact believing himself justified, by law.

79. Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law in doing it.

Illustration.

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment, exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

By S. 76 nothing is an offence which is done by a person who, by reason of a mistake in fact, in good faith, believes himself *bound* to do it. The present Section extends a similar exemption to a person doing an act who, by reason of a mistake in fact, in good faith, believes himself *justified* by law in doing it. Under both Sections there must be a *bonâ fide* intention to *advance the law* manifested by the circumstances attending the act which is the subject of the charge, and the party accused cannot allege generally that he had a good motive, but must allege specially that he believed in good faith that he was bound by law to do as he did, or that, being empowered by law to act in the matter, he had acted to the best of his judgment exerted in good faith. (Commr.'s 1st Rep., Ss. 113, 114.)

In the case of the *Queen* v. *Protab Chowkedar*, 2 W. R., Cr. R., 9, defendant, a chowkedar, was held, whether acting as a public officer or private individual, to have been justified under this Section in using all force necessary, even to wounding to secure the arrest of a person whom he took in good faith to be a thief.

Ignorance of the law cannot be set up as an excuse for doing an illegal act by persons capable of understanding it. If a person under an erroneous impression as to his legal rights commits an illegal act, he is considered guilty, although he may have exercised care and attention in attaining a knowledge of the law. To this there is one exception. By Exception 3, S. 300, death caused to a person by a public servant, or by a person aiding a public servant in the *bonâ fide* discharge of his duty, does not amount to murder, though the public servant may have exceeded his legal powers.

According to the Code every person not of unsound mind, and above 7 years, is presumed to have a knowledge of the law, though this may be rebutted by evidence in the case of children under 12 years of age.

Accident in the doing of a lawful act.

80. Nothing is an offence which is done by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Illustration.

A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

This Section exempts the doer of an innocent act in an innocent manner from any unforeseen evil result that may ensue from accident or misfortune. A thing can only be deemed to be caused accidentally when it is caused neither rashly, nor illegally, without criminal intention or knowledge of likelihood, and the mere doing of an innocent act without criminal knowledge or intent would not enable a defendant to plead this Section as a defence, unless he could show that he acted in such a manner as to avoid the imputation of rashness or negligence, or, in the words of the Section, that he had acted with proper care and caution.

Under English law if a person doing an act heedlessly and incautiously, causes death, he is guilty of manslaughter (Arch., 548; Roscoe, 644). By Ss 304, 327 of the original Code, provision was made for rendering the causing of death or grievous hurt rashly or negligently an offence. At the time of passing the Code, the Section making penal the causing of death rashly or negligently was omitted, while those referring to the causing grievous hurt, and hurt under the same circumstances, were retained. (Ss. 337, 338.) This defect was remedied by S. 12, Act XXVII, 1870, which declares that whoever causes death by doing any rash or negligent act not amounting to culpable homicide is liable to two years' imprisonment or fine or both. See S. 304A; *Queen* v. *Gorachand Gope and others*, 5 W. R, Cr. R., 55.

The doer can only claim protection from the result of accident or misfortune in the doing of a lawful act in a lawful manner. By the law of England, death caused in the doing of an unlawful act is murder or manslaughter, according as the unlawful act amount to a felony or misdemeanor (Arch., 547). It would appear to be different under the Code. Such an act would certainly not amount to culpable homicide: (Illustration (c), S. 299 *Alla Buksh* v. *Jaffer Ali*, N. A. Rep., 1851, 1365). By Ss. 304A, 328, provisions are made for death or hurt caused by rashness or negligence, and it would seem as if a person under the present law is no more liable for anything which is done by accident without criminal intention or knowledge in the doing of an unlawful act, with proper care and caution than he is for any unforeseen consequence, which may arise from doing an innocent act in a similar manner. See P. C. Note M., 64, 65; Commr.'s 1st Rep., Ss. 309, 315.

Act likely to cause harm but done without a criminal intent and to prevent other harm.

81. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation.—It is a question of fact in such a case whether the harm to be prevented or avoided was of

such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations.

(*a.*) A, the Captain of a Steam Vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B with 20 or 30 passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only 2 passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C, and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down C.

(*b.*) A in a great fire pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

In this Section the distinction between things done with "intent" and things done with merely a "knowledge of likelihood" adverted to under S. 39, is expressly mentioned. Under no circumstances can a person be justified in intentionally causing harm; but if he cause the harm without a criminal *intention*, and merely with the knowledge that is likely to ensue, he will not be held responsible for the result of his act, provided it be done in good faith to avoid or prevent a greater danger. The propriety of introducing a Section similar to this in the original Code was discussed by the authors of it, who decided against it. They considered it unadvisable to exempt from the operation of the Code acts committed from the desire of self-preservation, as a person causing the death of others by jumping into an overloaded boat, leaving a sinking vessel, or a starving person stealing under the pressure of distress, and that any injustice which might arise in such cases could be more properly met by the power to pardon possessed by Government. (P. C. Note B., 19.)

By the present Section it would appear, the person jumping into the boat would be protected, if he only went into the boat with a knowledge that it was likely to cause the death of others, but without any intention to cause their death; while the thief would not be justified, as theft necessarily presupposes criminal intention.

If a person, through his own fault and negligence, places himself in a position of danger, he cannot be protected from the consequences of a criminal act, though it may be only done with a knowledge of likelihood. Thus, suppose A, in order to cheat the insurers, runs his vessel on shore, and then sacrifices the lives of others, in order to save himself from a danger created by himself, he cannot plead this Section. (Illustration (a); P. C. Note B., 21.) See S. 518, Cr. Pro. Code.

Act of a child under 7 years of age.

82. Nothing is an offence which is done by a child under seven years of age.

Act of a child above 7 and under 12 years of age, who has not sufficient maturity of understanding.

83. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

By the law of England a child under 7 years of age is incapable of committing any offence. From 7 to 14, a child is deemed *primâ facie* incapable of

possessing the knowledge necessary to constitute guilt; but this presumption can be rebutted by proof of his understanding and judgment (Arch., 12). The Code follows the English law in fixing the period of absolute incapacity, but reduces the period of requiring proof of maturity of understanding from 14 to 12 years.

From the wording of the Section and S. 105 of the Evidence Act, it would seem that, although it be proved that the accused is between 7 and 12 years of age, he will not fall within the scope of this Section, unless it be shown on the part of the defence that he "has not attained sufficient maturity of understanding." On this point the Commissioners state (1st Rep., S. 117)—

"It would seem from this that maturity of *understanding is to be presumed* in the case of such a child, unless the negative be proved in the defence."

This rule of throwing the *onus* of proving a negative on the accused has not, as far as I can find, been followed by the Indian Courts, which seem in spite of the Evidence Act and view of the Commissioners to adopt the English practice of presuming incapacity to commit an offence till the contrary is proved on the part of the prosecution. In the case of the *Queen* v. *Mussamut Aimona*, 1 W. R., Cr. R., 43, defendant, a girl of 10 years of age, was charged with causing the death of her husband, the High Court held that a infant between 7 and 12 years of age is not answerable, unless there is sufficient proof of maturity of understanding.

Maturity of understanding is generally shown by proof of the circumstances under which the act was committed; but direct testimony of the accused person's capacity is also admissible—*Government* v. *Sreemotee Sathcowry Doobeanee*, 2 N. A. Rep., 1852, 467; *Queen* v. *Mussamut Aimona*, 1 W. R., Cr. R., 43.

The following facts have been considered sufficient to presume maturity of understanding. Killing a child for his ornaments, having possession of the ornaments and giving several contradictory statements as to how possession was obtained—*Government* v. *Roopa*, 1 N. A. Rep, 148; *Pooran* v. *Budloouh*, *id.*, 215; *Government* v. *Doomree Dosadh*, 2 N. A. Rep., 20, &c.; causing death and giving a false account of the blood-marks on his clothes—*Government* v. *Fukhirnee Chokry*, 2 N. A. Rep., 45; causing death and afterwards absconding and keeping the matter concealed—*Government* v. *Sreemotee Sathcowry Doobeanee*, 2 N. A. Rep., 1852, 467; causing death by striking a person, when asleep, with a *dao*—*Government* v. *Mussamut Sheetah*, 2 N. A. Rep., 1854, 467; *Queen* v. *Mussamut Aimona*, 1 W. R., Cr. R., 43.

Act of a person of unsound mind.

84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Unsoundness of mind may be natural, accidental, or acquired. The first is called idiocy; the second is called madness, if permanent; and lunacy, if it be intermittent with lucid intervals. Acquired insanity is restricted to cases where the derangement of mind is brought on by intoxicating drugs, and does not fall within the scope of this Section; but Ss. 85, 86. It differs generally from natural and accidental insanity, inasmuch as it is very transient, and can be traced to a permanent visible cause, which is not the case with the two former. But if the insanity arising from narcotic drugs becomes permanent or intermittent without a proximate corporeal cause, it amounts to unsoundness of mind as defined in this Section. To make unsoundness of mind a complete plea, its existence, permanent or occasional, must be clearly shown; and in the latter case the act should be clearly connected with the mental disease, since an act committed during a lucid interval is punishable as the acts of other men —*Government* v. *Bunwaree*, 2 N. A. Rep., 233. Unsoundness of mind on

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matters other than the act charged is not sufficient. It must be shown that the insanity was such that the accused was incapable of knowing the nature of the *particular act* he committed, or that in doing it he did not know that he was acting wrong or contrary to law. Thus, if a person afflicted with kleptomania were charged with murder, mere proof of kleptomania existing would not amount to a complete bar to punishment, and the offender would be held liable for the act, unless it could be shown that he was not capable of distinguishing right from wrong at the time he caused the death of the deceased, or did not know he was doing wrong in causing it.

Proof of insanity generally consists of evidence of the prisoner's behaviour at the time he committed the act; but testimony as to his conduct before and after up to the time of trial is also admissible as presumptive evidence of his mental condition when the act was committed—*Ramkunt Surma* v. *Moonshee Tukee*, 1 N. A. Rep., 384; *Government* v. *Pran*, *id.*, 192, &c. On the general ground that in matters of skill and judgment a competent person may be asked his opinion, a medical witness may be asked whether certain facts proved by other witnesses are symptoms of insanity; but it is a matter of doubt if he can be asked whether from the testimony given, the act of which the prisoner is charged is an act of insanity as that is the point to be decided by the trial (Arch., 15; Ros., 136). Such a question was not objected to in the case of *Government* v. *Bissun Chunder Baboo*, N. A. Rep., 1858, 57. And by S. 45, Act I, 1872, the opinions of experts as to whether a person's symptoms commonly show unsoundness of mind, and whether it is such as usually renders the person incapable of knowing the act is wrong or contrary to law, are relevant.

The medical evidence in the mofussil is generally confined to the deposition of the Civil Surgeon taken as directed by Ss. 423, 425, Criminal Procedure Code. But in cases of doubt the witnesses to the prisoner's habitual state of mind should be examined in his presence, and he should be invited to put any questions to them on his own part. He should then be carefully questioned as to the number of times he had himself seen the prisoner, the nature of his conversation with him, and all the circumstances from which, apart from the prisoner's real or professed delusions, he is led to regard him of sound or unsound mind. The questions should be put so as to elicit his opinion, after having had the advantage of hearing the statements of the members of the prisoner's family, neighbours, and other parties, as to the state of the prisoner's mind previously to, and at the time the actions were done and subsequently up to the time of trial—*Gonoo Mundul* v. *Deenbundhoo Puneegrahee*, N. A. Rep., 1851, 24; or he should first hear the witnesses, and after observing the prisoner for a month, give in a report on oath as to the result of his observations—*Queen* v. *Arzo Bebee*, 2 W. R., Cr. R., 33.

A medical witness is bound to give the grounds of his opinion—*Government* v. *Bissun Chunder Baboo*, N. A. Rep., 1858, 57.

The *onus* of proof lies with the prisoner; but if insanity be admitted, or proved to have existed at any particular period, it is supposed to continue till disproved, unless it be obviously of a temporary character. (Norton, S. 706; Taylor, L. W., Ss. 155, 342). Absence of motive for committing the act, and a subsequent attempt to commit suicide—*Mussamut Sookree* v. *Boodhun Bhooya*, N. A. Rep., 1849, 163; absence of motive and mental derangement the day before the act—*Queen Sheikh Mustafa*, 1 W. R., Cr. R., 1; and mental derangement a year previous to the act being committed, combined with peculiar circumstances, have been held sufficient to shift the burden of proof—*Queen Arzo Bebee*, 2 W. R., Cr., R., 33. But see S. 105, Evidence Act.

Plea of insanity allowed.—Murder committed under the influence of a paroxysm of fever—*Government* v. *Mungaleea*, 1. N. A. Rep., 300.

Murder committed during a fit of temporary insanity, the prisoner being subject to temporary derangements previously—*Government* v. *Dading Garrow*, N. A. Rep., 1829, 243.

Prisoner was found at 7 A.M. in his house sitting on the deceased, who was his mistress, and striking her with a *dão*. The dying woman said, prisoner, without any cause, struck her the first blow while she was asleep, and that on her waking he repeated the blow. Prisoner confessed to the Magistrate that he had killed the deceased, because she did not wish to remain with him; and he repeated this confession twice afterwards to other persons, giving different reasons for committing the act. The Superintendent of Dullundah Asylum, in whose charge the prisoner was from 21st of August to 1st December, stated, that prisoner was not insane but feigned insanity, and pretended to have lost the use of his legs, when he had not. In defence, it was shown that prisoner had been of unsound mind for three years; that he considered himself Maharaja of Burdwan; that he was in the habit of making noises like dogs, cocks, jackals; and that he had made absurd petitions to the criminal authorities. The Civil Surgeon, who had charge of the prisoner for some time, stated that prisoner was taciturn, considered himself Maharaja of Burdwan, and did not observe caste, and that he considered him to be of unsound mind before and after he went to the asylum. On the other hand it was shown, that prisoner was particular about caste until his commitment, and that he never made any noises in jail. Prisoner was convicted by the Court of Session, which considered that he was not insensible of doing an act contrary to law; but was released by the Nizamut Adawlut—*Government* v. *Bissun Chunder Baboo*, 1858, 57.

Prisoner was charged with killing his mother and wife, and wounding his child. The Civil Surgeon deposed that he had carefully watched the prisoner for one month, and had observed no traces of insanity. On the other hand, it was proved that he had been previously subject to temporary fits of insanity. There was no motive for committing the offence. His mother and wife at their death declared, he was a good husband and son, and denied that he had committed a voluntary and premeditated murder. The plea of his insanity was allowed—*Queen* v. *Sheik Mustafa*, 2 W. R., Cr. R., 19. See also *Government* v. *Amirto Doss*, 2 N. A. Rep., 1854, 787; *Government* v. *Ram Lall Patro Surnokar*, N. A. Rep., 1858, 41.

Prisoner killed deceased with a *latee*, and when first seen afterwards was walking round the corpse waving his *latee*. When next seen he was sitting in a tree, beneath which a horse was tied, crying "hush, hush." Soon after he attacked a body of people, broke open their boxes, and scattered some of the contents about. He was then overpowered. The Police Officer, in whose custody he was, deposed, immediately after the act, he was sometimes in his senses and sometimes out of them. At the time of trial he spoke rationally, but had a wild, uneasy look. The Civil Surgeon considered defendant was not insane while under his care, but that he was eccentric, and might have been subject to attacks of mania with lucid intervals. Prisoner was convicted by the Court of Session; and acquitted by the High Court—*Queen* v. *Pursoram Doss*, 7 W. R., Cr. R., 42.

Plea of Insanity disallowed.—Prisoner was charged with murder. The Civil Surgeon deposed, she was capable of understanding the difference between right and wrong in trivial matters; but that he considered her incapable of understanding that murder was a heinous offence. The prisoner was convicted—*Queen* v. *Pochee*, 3 W. R., Cr. R., 9.

In the *Queen* v. *Bishendharee Kaher*, 7 W. R., Cr. R., 100, prisoner sacrificed his child, and attempted to cut his own throat with a knife, before the shrine of a Hindoo deity. He was found by the Police the day after the act was committed, and being unable to speak wrote that "My son will come to life on Tuesday. . . . . I made a vow, in case a son should be born to me, to sacrifice Ganges' water and do pooja. A son was born, but no wealth came; *for this reason* I sacrificed my son." It was proved he was very violent when under the influence of liquor, but that he had never been insane; and at the trial he denied ever having committed the offence. Prisoner was convicted—Glover, J., holding: "The prisoner's conduct, at

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the time of his discovery by the police is inconsistent with the idea of insanity. He had sacrificed his son because wealth had not accompanied its birth. . . . . In short, although there may have been some religious enthusiasm, or even hallucination, there is nothing to show that Bishu killed his child when in a state of mind that incapacitated him from knowing right from wrong." By S. 424, Criminal Procedure Code, in cases exclusively triable by the Court of Session, the Magistrate must commit even if he finds prisoner was insane when he committed the act.

For procedure in trying person of unsound mind, see Chap. XXXI, Cr. Pro., Code.

Act of a person incapable of judgment by reason of intoxication caused against his will.

85. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Offence requiring a particular intent or knowledge committed by one who is intoxicated.

86. In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

This Section distinguishes between acts done with intent and acts done with a knowledge of the consequence that is likely to ensue. In consonance with English law it declares, that intoxication, when voluntarily caused, is no excuse for committing an act which amounts to an offence when done with a certain knowledge, and the doer must be considered to have the same knowledge that he would have had if he had been sober. So intoxication has been held to be no justification to a charge of murder, or of voluntarily causing grievous hurt—*Queen* v. *Akulputtee Gossain*, 5 W. R., Cr. R., 58; *Queen* v. *Boodhee Khan*, 5 W. R., Cr. R., 79.

By the law of England, when an act is not an offence unless done with a particular intent, a person intoxicated is not necessarily considered to have the same intention as he would have had if he had been in his sober senses. And in such a case the fact of intoxication may be taken into consideration in determining the question of intention. So in a case in which a person was charged with attempting to commit suicide, the fact of her being quite drunk was considered to negative the intention to destroy his life (Ros., 910.) The same rule prevails in India, where it has been laid down that intoxication is a material element in determining intent; but that to plead it successfully as a bar to punishment it must be shown to be of such a nature as to exclude the idea of deliberation or design—*Government* v. *Utum Hajung and others*, N. A. Rep., 1857, 745; *Government* v. *Bramier*, N. A. Rep., 1858, 517; *Government* v. *Murray*, N. A. Rep., 1859, 146. But see a contrary opinion in the case of the *Queen* v. *Dasser Bhooyan*, 8. W. R., Cr. R., 71, n which the High Court (Mitter, J.) held: "That he was drunk at the

time is a fact which ought to be eliminated from the enquiry as far as any question of knowledge or *intent* on his part is concerned."

If a person becomes intoxicated without his knowledge, or against his will, or through frequent intoxication becomes afflicted with insanity or lunacy, he is only accountable for his acts when he knows the nature of them and that he was wrong in committing them.

Act not intended and not known to be likely to cause death or grievous hurt done by consent.

87. Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death, or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Illustration.

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

Where a person above 18 years consents to suffer harm, the infliction to it is not an offence, whether for his benefit or not, unless it be done with the intention of causing death or grievous hurt, or with the knowledge such is likely to ensue. Death caused with consent of a person above 18 years can never amount to murder, but only to culpable homicide. (S. 300, Excep. 5; *Queen* v. *Baboolun Hijrah*, 5 W. R., Cr. R., 7.)

The following illustration was embodied in the original Code: "A, a friend of Z, calls at Z's house in Z's absence, and writes and seals several letters there with Z's paper and wax, without asking any person's permission; here, if the acquaintance between A and Z be such that, according to the usage of society, the consent of Z must be implied, thence A has committed no offence."

Act not intended to cause death done by consent in good faith for the benefit of a person.

88. Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration.

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

This Section exempts from punishment the doer of any harm short of intentional death to any person who has consented to suffer it, on the condition that the act causing the harm is done in good faith for the benefit of the party suffering it.

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In connection with it the Authors of the Code remark (Note B., 17):

"In general we have made no distinction between cases in which a man causes an effect designedly and cases in which he caused it with a knowledge that he is likely to cause it. But there is, as it appears to us, a class of cases in which it is absolutely necessary to make a distinction. It is often the wisest thing that a man can do to expose his life to great hazard. It is often the greatest service that can be rendered to him to do what may probably cause his death. He may labor under a cruel and wasting malady which is certain to shorten life, and which renders his life, while it lasts, useless to others and a torment for himself. Suppose that, under these circumstances, he undeceived, gives his free and intelligent consent to take the risk of an operation which, in a large proportion of cases, has proved fatal, but which is the only means by which the disease can possibly be cured, and which, if it succeeds, will restore him to health and vigor, we do not conceive it would be expedient to punish the Surgeon who should perform the operation, though by performing it he might cause death, not intending to cause it; but knowing himself to be likely to cause it. Again, if a person attacked by a wild beast should call out to his friends to fire, though with eminent hazard to himself, and they were to obey the call, we do not conceive that it would be expedient to punish them, though they might by firing cause his death, and though, when they fired, they knew themselves to be likely to cause it." See S. 91, and Explanation to S. 92.

Act done in good faith for the benefit of a child or person of unsound mind by or by consent of guardian.

89. Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person: Provided—

Provisoe.

First. That this exception shall not extend to the intentional causing of death, or to the attempting to cause death:

Secondly. That this exception shall not extend to the doing of any thing which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt; or the curing of any grievous disease or infirmity:

Thirdly. That this extension shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity:

Fourthly. That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration.

A, in good faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

"A lunatic may be in a state which makes it proper that he should be put in a strait waistcoat. A child may meet with an accident which may render amputation necessary. But to put a strait waistcoat on a man without his consent is, under our definition, to commit an assault. To amputate a limb is, by our definition, voluntarily to cause grievous hurt, and as sharp instruments are used it is a very highly penal offence. We have therefore provided by this clause, that the consent of the guardian of a sufferer who is an infant or who is of unsound mind shall, to a great extent, have the same effect which the consent of the sufferer himself would have if he were of ripe age and sound mind." (P. C. Note B., 17.)

The following illustrations were embodied in the original Code (p. 15).

"A, a parent, whips his child moderately for the child's benefit. A has committed no offence.

"A confines his child for the child's benefit. A has committed no offence.

"A, in good faith for his daughter's benefit, intentionally kills her to prevent her falling into the hands of the Pendaris, A is not within the exception.

"A, in good faith for his child's pecuniary benefit, emasculates his child. Here, inasmuch as A caused grievous hurt to the child for a purpose other than preventing death or grievous hurt to the child, A is not within the exception.

"A, intending in good faith the pecuniary benefit of Z his daughter, a child under 12 years of age, abets a rape committed by B on Z. Neither A nor B is within the exception."

Consent known to be given under fear or misconception.

90. A consent is not such a consent as is intended by any Section of this Code, if the consent is given by a person under fear of injury or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception—Or

Consent of a child or person of unsound mind.

If the consent is given by a person who from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

The consent must be free. Mere submission after a struggle or consent from fear of injury is not sufficient. So where a constable placed a chowkeedar at the door of a house, and going in had sexual intercourse with a woman, who at first objected, but afterwards submitted (the chowkeedar did not, it appears, interfere), it was held to be a rape, though the woman might have been strong enough to resist him alone, as the chowkeedar prevented any attempt at rescue, and she might reasonably have been afraid of the consequences of continued opposition—*Queen* v. *Akbar Kazee*, 1 W. R., Cr. R., 23.

Consent under a misconception is not valid, if the person to whom the consent is given is aware of its existence; but it is otherwise if it be unknown

to him. Thus, if an unskilled quack, undertaking to perform a very dangerous surgical operation, obtains consent by misrepresenting his ability, such consent is valueless (Commr.'s 1st Rep., S. 123). But an honest misconception of a person's skill by himself and the consenting party does not invalidate the consent of the latter; so where an unskilled man performed emasculation by consent in such a rough manner that death quickly ensued, he was only convicted of culpable homicide for causing death by consent—*Queen* v. *Baboolun Hijrah*, 5 W. R., Cr. R., 7. So where the accused, professed snake-charmers, believing, though erroneously that they had the power of restoring to health persons bitten by snakes, persuaded some persons to allow themselves to be bitten by a poisonous snake from the effects of which death ensued, held that the consent was valid—*Queen* v. *Poonai Fatthemah*, 12 W. R., Cr. C., 7.

Consent given under the influence of passion would amount to consent under this Section. (Commr.'s 1st Rep., S. 93.)

The proof of the plea of consent lies on the party pleading it. Only such evidence of its existence as would be sufficient in a civil case is required. Where a previous consent has been obtained, it is presumed to exist up to the time when the act is committed, unless it is shown to have been rescinded. Thus, where a woman several times desired her husband to kill her, and he declined to do so when asked; but at last killed her when she was asleep, and consequently could not give consent, the High Court held that the act was only homicide by consent, as the husband had no reason to suppose she had abandoned the intention she had entertained so long—*Queen* v. *Anuuto Rurnagat*, 6 W. R., Cr. R., 57.

Acts which are offences independently of harm caused to the person consenting, are not within the exceptions in Sections 87, 88, and 89.

91. The exceptions in Sections 87, 88, and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration.

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore it is not an offence "by reason of such harm;" and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

Act done in good faith for the benefit of a person without consent.

92. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit. Provided—

Provisoes.

First. That this exception shall not extend to the intentional causing of death, or attempting to cause death.

Secondly. That this exception shall not extend to the doing of any thing which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt or the curing of any grievous disease or infirmity.

Thirdly. That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt.

Fourthly. That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations.

(*a.*) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(*b.*) Z is carried off by a tiger. A fires at the tiger, knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(*c.*) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(*d.*) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of Sections 88, 89, and 92.

"There yet remains a kindred class of cases which are by no means of rare occurrence. For example, a man falls down in an apoplectic fit. Bleeding alone can save him, and he is unable to signify his consent to be bled. The Surgeon who bleeds him commits an act falling under the definition of an offence. The Surgeon, who is not the patient's guardian, and has no authority from any such guardian, yet it is evident the Surgeon ought not to be punished.

"Again, a house is on fire, a person snatches up a child too young to understand the danger, and flings it from the house-top, with a faint hope that it may be caught in a blanket below; but with the knowledge that it is highly probable it will be dashed to pieces. Here, though the child may be killed by the fall, though the person throwing it knew that it would very probably be killed, and though he was not the child's parent or guardian, he ought not to be punished.

"In these examples there is what may be called temporary guardianship justified by the emergency of the case and the humanity of the motive. This temporary guardianship bears a considerable analogy to that temporary Magistracy with which the law invests every person who is present when a great crime is committed, or when the public peace is concerned. To acts done in the exercise of this temporary guardianship we extend a protection very similar to that which we have given to the acts of regular guardians." (P. C. Note B., 18).

Communication made in good faith.

93. No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it be made for the benefit of that person.

Illustration.

A, a Surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

Act to which a person is compelled by threats.

94. Except murder and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence ; provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1. — A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do any thing that is an offence by law.

Explanation 2.—A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law, for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

By this Section a person is excused from the consequences of any act, except murder and offences against State punishable with death, done under fear of *instant* death ; but fear of hurt or even grievous hurt is not a sufficient justification. The decisions of the High Court on this Section are conflicting. In the *Queen* v. *Mothoorpershad Panday*, 2 W. R., Cr. R., 10, Glover, J., held " prisoners Nos. 4 and 5 are guilty by their own admission. They confess that they knew the true state of the case ; but urge they were forced to give false evidence by threat of the Police Inspector. This plea does not bring them within Exception 94 of the Penal Code, as there was no apprehension of instant death before them." This opinion has been greatly modified by a later dictum of the same Judge in the case of the *Queen* v. *Nagena Ourat*, 3 W. R., Cr. R., 6, where the prisoner was charged with perjury on a statement before a Magistrate in open Court. The learned Judge held, " I consider it proved that the prisoner was coerced by the Police ; that she received at least one kick, and was threatened with worse treatment ; and that whatever she may have stated to the Joint Magistrate must be considered

altogether as null and void as if it had not been made, the statement being made after bad treatment and under the influence of threats." So it has been held where a person confessed to assisting under *compulsion* in committing a *murder*, that the confession did not amount to an admission of guilt—*Queen* v. *Kristo Mundul and others*, 7 W. R., Cr. R., 8.

Unlike English law, there is no provision in the Code for the case of a wife acting under the coercion of her husband, present at the time of committing an offence. (Commr.'s 1st Rep., Ss. 173, 174.)

Act causing slight harm.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

"The Section is intended to provide for those cases which, though from the imperfections of language they fall within the letter of the law, are yet not within its spirit, and are all over the world considered by the public, and for the most part dealt with by the tribunals, as innocent. As our definitions are framed, it is theft to dip a pen in another man's ink, mischief to crumble one of his wafers, an assault to cover him with a cloud of dust by riding past him, hurt to incommode him by pressing in getting into a carriage; there are innumerable acts without performing which men cannot live together in society—acts which all men constantly do and suffer in turn, and which it is desirable that they should do and suffer in turn, yet which differ only in degree from crime. That these ought not to be treated as crimes is evident, and we think it far better expressly to except them from the penal clauses of the Code, than to leave it to the Judges to except them in practice." (P. C. Note B., 18). So when a person was convicted for taking pods almost valueless from a tree standing on Government waste ground, it was held that this section applied, and no offence was committed—*Reg.* v. *Kasin* bin *Ravi*, 5 Bom. R., Cr. Ca., 35.

OF THE RIGHT OF PRIVATE DEFENCE.

Nothing done in private defence is an offence.

96. Nothing is an offence which is done in the exercise of the right of private defence.

Right of private defence of the body and of property.

97. Every person has a right, subject to the restrictions contained in Section 99, to defend—

Firstly. His own body, and the body of any other person, against any offence affecting the human body:

Secondly. The property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass, or which is an attempt to commit theft, robbery, mischief, or criminal trespass.

The right of private defence is granted solely for defence. It will not justify any act of aggression not necessary for preservation, and hence is often a weak defence. Thus, under S. 105, Criminal Procedure Code, any private person can arrest any person who commits a non-bailable and cognizable

offence, in his view, and by S. 106, the master or mate of a British merchant ship can arrest a seaman or apprentice. If, in either case, the person sought to be arrested was killed in the due prosecution of the arrest, the killer would not be liable, though he would if he was only in a position to plead the right of private defence. See note on S. 99 and S. 104.

Right of private defence against the act of a person of unsound mind, &c.

98. When an act, which would otherwise be a certain offence, is not that offence by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations.

(*a.*) Z, under the influence of madness, attempts to kill A. Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(*b.*) A enters by night a house which he is legally entitled to enter. Z, in good faith taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z which he would have if Z were not acting under that misconception.

Acts against which there is no right of private defence.

99. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

There is no right of private defence against an act done by a public officer acting *bonâ fide* under colour of his office. Thus, if a Police officer or other public servant, competent by virtue of his office to make arrests, acting in good faith as a public servant, apprehends a person, such person has no right of defence, although the arrest may have not been strictly legal. But if a person, whether legally competent or not to make arrests, arrests a person maliciously, or when not acting under colour of his office; or if a person competent to make arrests, makes an arrest *bonâ fide*, and then under colour of his office maliciously exceeds his authority and does something exceedingly offensive,—the person arrested does not lose his right of private defence against him, and is justified in resisting his action by force. Thus, if a person arrested in good faith is subjected by the officer arresting him to legal acts which he considers indignities, and kills the officer, it is murder; if the officer, though acting *bonâ fide*, exceeded his legal powers, and the person arrested were to cause his death under grave and sudden provocation at the indignities suffered, it would be culpable homicide only; but if the acts were done maliciously or not under colour of, and were such as justified the right of private defence to death, the person arrested would be justified in causing death.

Under English law death caused in resisting a public servant making an arrest by warrant or writ is partly extenuated when the document is defective in the frame of it; or the name of the party, or the officer is inserted without authority; or the manner of making the arrest is clearly illegal (Ros., 699: Arch., 555).

In this respect the Indian law differs materially, as there is no right of private defence, even though the document be defective or unlawful, or it be executed by an officer having no authority, or the manner of executing it be unlawful, provided the officer *bonâ fide* believes himself to be acting legally, and the person arrested is cognizant that he is a public officer and acting under the order. So it has been held by the High Court of Bombay where a subordinate Police officer attempted to search a house without a search-warrant, that even though he was not strictly judged in doing so, that a person obstructing and resisting could not set up the illegality as a justification unless he could show that the Police officer was not acting in good faith—*Reg* v. *Vyankatrav Shrinivas*, 7 Bom. R., Cr. Ca., 50.

Whether the person claiming the benefit of this Section knew or did not know that he was exercising it against a public officer, is a matter of fact to be decided on the circumstances of each case.

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There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

By S. 96, Criminal Procedure Code, every person is bound to assist a Magistrate or Police officer in preventing a breach of the peace, suppressing a riot or affray, or in arresting any person they are authorized to arrest.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

As the right of private defence is granted for defence only, it cannot be exercised when there is time to seek the protection of the public authorities, and if a a person acts in such a manner as clearly shows his determination to enforce a right by force, and not apply to the public authorities, he cannot claim protection under the right of private defence. So where the villagers of one village erected a dam across a watercourse, to the detriment of a neighbouring village, and the people of the latter village turning out armed to remove the dam, and a fight ensued,—it was held neither party could claim the right of private defence, as the conduct of the latter party showed they were determined to enforce a supposed right by force, while there was time to have recourse to the protection of the authorities, and the former was wrong in erecting the dam and opposing the attack—*Queen* v. *Maun Sing and others*, 7 W. R., Cr. R., 103. So where some servants of an Indigo factory went armed to forcibly sow the land of one Jeebun with indigo, and the villagers turning out, a fight ensued, Glover, J., held: "In such a case there can be no right of private defence either to one side or the other. Both parties were evidently aware of what was likely to happen, for they both turned out in force, and were armed with deadly weapons; granting that the factory had a perfect right under their contract to resow the land of Jeebun with indigo, it is clear they transgressed the law by doing so, or trying to do so, forcibly. There was a Police Station within easy distance, to which they could have applied for assistance if they had a claim to it, and in any case the Civil Courts were open to them to recover damages from Jeebun for breach of contract. Tha factory people, who seek to justify their acts under S. 105 of the Penal Code, must show that they applied for the protection of the law, or did what in them lay to procure its intervention"—*Queen* v. *Jeolall and others*, 7 W. R., Cr. R., 34.

CHAP IV
S 99

Extent to which the right may be exercised.

The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or, if he has authority in writing, unless he produces such authority if demanded.

The right of private defence of person or property is given for protection only, and any violence used in the exercise of it beyond what is necessary and unavoidable, is an offence.

The amount of force which a person is justified in using depends on the circumstances of the case, and in order to plead the right successfully the defendant must prove the necessity of the force used from the manner of the attack, the means used in the attack, or some other manifestation of a criminal intent; that in fact there was no alternative, but to suffer the wrong or inflict the harm caused—*Queen* v. *Sohun and Samoo*, 2 W. R., Cr. R., 59; *Government* v. *Henry Bramier*, N. A. Rep., 1858, 157.

The person attacked has a right to resist, and instead of giving way to oppose force by force to the infliction of such injury as is legal and necessary—*Queen* v. *Sachee Boler*, 7 W. R, Cr. R, 112. The rule on this point is laid down in Alison's Criminal Law of Scotland, 77: "Though fully justified in retaliating, the party must not carry his resentment to such a length as to become the assailant in his turn, as by continuing to beat the aggressor after he has been disabled, or has submitted, or by using a lethal or ponderous weapon against a fist or cane, or in general, pushing his advantage in point of strength or weapon to the uttermost. In such cases the defence degenerates in aggression, and the original assailant is entitled to demand punishment for the *new assault* committed on him after his original attack had been duly chastised." So where a person finding a burglary was taking place in his house, came out with a stick in his hand, and found two men close to an aperture made in the *lattee;* one of them made off, but the other advanced to attack prisoner, who gave him one blow of the stick in the dark and killed him, it was held that, as prisoner only struck one blow at random in the dark, he could not be said to have used more force than was necessary—*Queen* v. *Peelkoo Nushyo and others*, 2 W. R., Cr. R., 43. So also where prisoner finding a thief entering his house through a *sindh*, seized him and holding him with his face downwards to prevent his entrance, caused his death by suffocation—*Queen* v. *Kurrim Bux*, 3 W. R., Cr. R., 12. So when a boy of 17 armed with a stick, which was neither iron pointed nor shod, found a person stealing his property and killed him,—it was held, as he did not kill him voluntarily, he did not go beyond the right of private defence—*Reg.* v. *Mokee*, 12 W. R., Cr. R., 15.

A person cannot claim protection for causing the death of a thief in capturing him, where, from the number of persons attempting to make the arrest, or any other cause, he could have been apprehended easily—7 W. R., Cr. L., 4, No. 623; or where a number of persons having apprehended a person committing house-breaking strangled him—*Queen* v. *Dhununjáí Poly*, 14 W. R., Cr. R., 68. So where a person killed a feeble old woman found thieving at night, he was held not to be justified by the right of private defence—*Queen* v. *Gokool Bowree and others*, 5 W. R., Cr. R., 33. So where A has passed on the lands of B whose servants seized and confined A till the following day when B gave intimation to the Police, held the conduct of B and his servants was not justified by the right of private defence—*Queen* v. *Kassinath*, 13 W. R., Cr. R., 64.

There is no protection when the act sought to be excused is of a violence perfectly unnecessary under the circumstances of the case. So when a person, catching a thief in his house at night, deliberately killed him with a *kodalee* to prevent his *escape*—*Queen* v. *Darwan Geer*, 5 W. R., Cr. R., 73; or with a pole-axe when *escaping*—*Queen* v. *Fuheera Chamar*, 16 W. R., Cr. R., 50; so when deceased attempted to take a *kodalee* from a person, and he resisting struck him with it and killed him, the plea of private defence was disallowed—*Queen* v. *Fuzza Meah*, 6 W. R., Cr. R., 89; so where prisoners armed with spears attacked and killed two persons unarmed, who were ploughing a field believed by the prisoners to be theirs—*Queen* v. *Gour Chand Chung*, 8 W. R., Cr. R., 29.

If persons court an attack they cannot plead that they acted in self-defence. So when persons having reason to apprehend an attack went out to meet the attacking party, instead of remaining in their homes, and a fight ensued, they were punished—*Queen* v. *Nowabdee and others*, 2 W., 118.

It is doubtful if the defendants do not exercise their right at first, whether they can do so afterwards. So when certain persons did not resist on the first attack but went home, and having armed themselves with deadly weapons, returned and wounded the attacking party, it was held, but not unanimously, that the parties had overstepped the powers given them by law, and that though resistance at first might be justified, the right did not, to going to their houses and returning armed with swords to use them—*Queen* v. *Sohun and Samoo*, 2 W. R., Cr. R., 59.

The following cases were decided before the Code became law:—

Deceased went to the house of prisoner in the middle of the night, had lifted up the *jamp* of the door, and was going in with the intention of committing a rape on prisoner (a widow), who seeing a person entering struck him a blow with a *dâo* on the head, of which he died next day. Prisoner was acquitted—*Molookram* v. *Mussamut Bochun*, N. A. Rep., 1829, 232.

Prisoners found deceased attempting to commit a rape on their sister-in-law, and dragging him out killed him, the killing was not justified, as resistance is only allowable to prevent the offence—*Government* v. *Nuddee Chung and Surroop Chung*, N. A. R., 1853, 210, and see note to S. 104.

When the right of private defence of the body extends to causing death.

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding Section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:—

First. Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly. Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly. An assault with the intention of committing rape;

Fourthly. An assault with the intention of gratifying unnatural lust;

Fifthly. An assault with the intention of kidnapping or abducting;

Sixthly. An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

When such right extends to causing any harm other than death.

101. If the offence be not of any of the descriptions enumerated in the last preceding Section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in Section 99, to the voluntary causing to the assailant of any harm other than death.

Commencement and continuance of the right of private defence of the body.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

A person is not bound to wait till the offence has been partly committed in order to exercise his right of private defence. He is justified in exercising it as soon as the attacking party, by *threat* or attempt to commit the offence, gives reasonable ground to suppose the offence will be committed; and it continues as long as danger to body continues. The apprehension of danger must be based on a reasonable ground, and not on a mere reckless conjecture or suspicion. If, from the circumstances attending the attack, it can be shown that the person exercising the right took ordinary precaution against error in ascertaining the facts, and had a reasonable foundation for believing danger existed, he will be irresponsible whether he is mistaken as to the facts or not. A, B and C met at a drinking shop and drank together. On their departure C went on in front. A and B quarrelled about B having, as A declared, caused the death of the latter's four children by incantation. B admitted it, and said he would turn A into a tiger at once. Whereupon A killed him with a *lance*. Held, A had no reasonable apprehension of danger—*Queen* v. *Gobendun*, 13 W. R., Cr. C., 55.

Whether a person will be justified in resisting an attack to death depends on whether the circumstances of the case are such as lead to the belief that an

offence of the kind described under S. 100 will be committed or not; and that causing death is necessary to prevent its commission. The *onus* of proof lies on defendant. Thus, suppose a woman should justify homicide, on the ground that she did it to prevent rape, she would be bound to prove to the satisfaction of the Court the existence of such circumstances attending the assault as would show the intent of the man and the necessity of causing death, to prevent him accomplishing his purpose. If otherwise, the voluntary homicide will at least amount to culpable homicide not amounting to murder, if not to murder. (See S. 300, Cl. 1.)

When the offence is such that the right of defence against it does not amount to death or homicide, death caused in defence of person will at least amount to culpable homicide not amounting to murder, as there is no legal right to cause death. But a person cannot be convicted for any less offences, such as rioting, if acquitted of culpable homicide. (See note to S. 104.)

When the right of private defence of property extends to causing death.

103. The right of private defence of property extends, under the restrictions mentioned in Section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:

First. Robbery:

Secondly. House-breaking by night:

Thirdly. Mischief by fire committed on any building, tent, or vessel, which building, tent, or vessel is used as a human dwelling, or as a place for the custody of property:

Fourthly. Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

When such right extends to causing any harm other than death.

104. If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding Section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in Section 99, to the voluntary causing to the wrong-doer of any harm other than death.

The right of private defence of property commences as soon as a reasonable apprehension of danger to property arises. If the danger be of the kind mentioned in S. 103, death, if necessary, may be voluntarily caused in defence. The apprehension must be a reasonable apprehension, and a person causing death cannot put forward his own private belief of such apprehension, unless

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he can show he had some reasonable foundation for it. Thus, if a man shoot a servant coming to him by night, mistaking him for a robber, he must prove, in order to obtain the benefit of the Section, that the circumstances were such that he in good faith believed him to be a robber.

Section 104 only extends the right of private defence in certain cases to voluntarily causing hurt or grievous hurt; so where a person assisted by a friend hurt another severely, who entered his house with the object of committing adultery, held to be no offence—*Queen* v. *Dauman Teli*, 20 W. R., Cr. R., 36. When death is voluntarily caused, culpable homicide not amounting to murder is at least committed—S. 300, Excep. 2—*Queen* v. *Shunker Sing and others*, 1 W. R., Cr. R., 34. Most of the cases in which the question as to the right of private defence of property will arise, are those in which there is a fight between two parties about land. In such cases, where death is caused, the further question will arise whether the person alone who causes death, or he and all his supporters, are all culpable. This must depend on the circumstances of each case. The fact of their assembling to defend a right, and that death ensued, will not, it seems render them all liable, nor turn such an assembly into an unlawful assembly; but if it appears that the defenders assemble under such circumstances, that it is apparent they intended to cause, or run the risk of causing, death, and death ensues, then the assembly becomes an unlawful assembly, and they are all guilty of culpable homicide. They cannot, however, be found guilty of any minor offence, as the right extends to causing anything short of death. Thus, if the defenders be acquitted of culpable homicide, they cannot be convicted for any less offence, such as rioting—*Queen* v. *Mitto Sing and others*, 3 W. R., Cr. R., 41.

There are several other decisions on this Section which seem to carry the right of private defence beyond its legitimate limits. In the *Queen* v. *Sachee*, 7 W. R., Cr. R., 112, Markby and Glover, JJ., held that, when a person is in peaceful possession of land, he is entitled to oppose his dispossession, and inflict such injury as is necessary, and even cause death. This decision was followed in the case of the *Queen* v. *Gurucharn Chang*, 6 Beng. R., App., 9, where it was held, when persons caused death in resisting the cutting of their corn, they committed no offence. A somewhat similar conclusion, but much more guarded and strictly legal, has been drawn in the *Queen* v. *Mokee*, 12 W. R., Cr. R., 15, in which it has been held that where a person kills a thief, but not under such circumstances as amounted to voluntarily causing death, he is not guilty of any offence.

Commencement and continuance of the right of private defence of property.

105. The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property, or the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes, or attempts to cause to any person death or hurt or wrongful restraint, or as long as the fear of instant death, or of instant hurt, or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the

offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass, which has been begun by such house-breaking, continues.

We are not aware of the meaning intended by the expression till "the offender has effected his retreat with the property." We know not certainly when he is to be considered as having effected his retreat; probably it is when he has once got off having escaped immediate pursuit or pursuit not having been made; but the meaning should be made certain by an explanation or illustration. We presume that the protection of parties pursuing robbers, &c., for the recovery of property which they have succeeded in carrying off, or for bringing them to justice, was thought not to be within the scope of the provisions touching the right of private defence. We apprehend that under the rules which will be laid down in the Code of Procedure, parties will be protected on such occasions under Ss. 76 and 79. (Commr.'s 1st Rep., S. 149.)

Under Cl. 5 the right of private defence continues only so long as the house-trespass continues, and if a person follows a thief and kills him on the open after the house-trespass has ceased, he cannot plead the right of private defence—*Queen* v. *Balakee Jolahed*, 10 W. R., Cr. R., 9.

Right of private defence against a deadly assault when there is risk of harm to an innocent person.

106. If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right to private defence extends to the running of that risk.

Illustration.

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

CHAPTER V.*

OF ABETMENT.

Abetment of a thing.

107. A person abets the doing of a thing, who,

First. Instigates any person to do that thing; or,

Secondly. Engages with one or more other person or persons in any conspiracy for the doing of that thing,

* The following Chapters, namely, IV (*General Exceptions*), V (*Of Abetment*), and XXIII (*Of Attempts to commit Offences*) shall apply to offences punishable under the said Ss. 121A, 294A and 304A, and the said Chapters IV and V shall apply to offences punishable under the said Ss. 121A and 225A. (S. 13, Act XXVII of 1870.)

if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Charge. There is no general form of charge for all kinds of abetment, each kind must be charged differently, according as it falls within one or other of the different Sections, and the charge should state the particular kind of abetment of which the person indicted stands accused.

Principals and abettors should be charged in separate heads, even though the abettors were present at the time when the offence was committed, and guilty as principals under S. 114—5 W. R., Cr. L., 5, No. 243, 1866. They may be charged and tried together or separately (S. 458, Cr. Pro. Code).

Under English law principals of the second degree may be tried and convicted before the parties charged as principal of the first degree have been brought to justice, or even after they have been tried and acquitted (Ros., 170; Arch., 7, 9). This rule is, it seems, also followed by the Indian Courts, as when a case against subordinate prisoners was deferred, because the principal offenders had not been apprehended, the High Court directed the trial to proceed—5 W. R., Cr. L., 21, No. 795, 1865.

A charge of abetment may be enquired into and tried either in the district in which the abetment was committed or in the district where the offence abetted was committed. A, B, C and others combine together to abet the waging of war against the Queen. Any conspirator may be tried in any district in which acts were done by any of the conspirators in pursuance of the original concerted plan and with reference to the common object (Illus. (*d*), S. 66, Cr. Pro. Code.) Where a foreign subject resident in foreign territory instigated the commission of an offence which in consequence was committed in British territory,—*Held*, the instigation not having taken place in any district, the instigator was not amenable to a British Court.—*Reg.* v. *Pirtai*, Bom. H. C., July 1873.

"*Aid.*" Under English law the persons convicted with the commission of any offence are divided into—principals of the first degree, principals of the second degree, and accessories before the fact. A principal of the first degree is the actual perpetrator of the offence; a principal of the second degree, one who is actually present aiding and abetting the commission of the offence, or who, though not actually present, an ear or eye-witness of the transaction, is considered constructively present close by with the intention of assisting, and

near enough to afford assistance should occasion arise (Ros., 169; Arch., 5); an accessory before the fact is one who, being absent at the time of the act being committed, has procured, counselled, commanded, or abetted another to commit it (Arch., 8; Ros., 170). Under the Code there is no such division of offenders into leaders and followers, principals and subordinate agents. By Ss. 34, 35, where an act is committed by several persons, every one of them is as liable as if he himself committed it, and by S. 37, where an offence is made up of several acts, the doer of any one of them singly or jointly is liable for the offence, so that under the Code all principals of the first degree, and all principals of the second degree, except such as are considered constructively present, though not actually present or having any hand in the act, are treated as principals in committing an offence. All other persons constructively considered principals of the second degree, and accessories before the fact under English law are considered as abettors under the Code. But no act subsequent to the offence can be looked on as abetment. So persons who give evidence in support of a false charge are not thereby liable for abetting the false charge—*Queen* v. *Panu Pundah*, 18 W. R., Cr. C., 28; so mere subsequent knowledge of a theft being committed is insufficient to prove abetment—*Queen* v. *Shumeruddin*, 2 W. R., Cr. R., 40; so where a person was present at a murder without being aware that such was to be committed, and through fear not only did not interfere, but helped to conceal the body,—*Held* not guilty of abetment of murder; but only under S. 201 for causing the disappearance of the body—*Queen* v. *Sohudhan Bera*, 6 W. R., Cr. R., 80. For further information see Commr.'s 1st Rep., Ss. 180, 183.

In one particular the English law differs greatly from the Code. If a child or any other person, excused from responsibility of his acts on account of his immaturity of understanding or unsoundness of mind, be instigated to commit an offence, the instigator, though absent when the act was committed, is considered a principal in the first degree. Under the Code he is only considered as an abettor. (Arch, 4; illustration (a) S. 108, Expla. 3.

Where a man died from the effects of the attack of two others, and it was uncertain which of them struck, they were both convicted as principals and not as abettors of murder—*Queen* v. *Jan Mamood and Kamoo Gazee*, 1 W. R., Cr. R., 49. So where a master accompanied his servant, knowing the latter's intention to commit murder, and was present when the murder was committed, he was held to have been a principal, although he did not strike a blow, as the only inference was they were both acting in concert—*Queen* v. *Hyder Jolaha*, 6 W. R., Cr. R., 83. (See Ss. 35, 114.)

By S. 149 every member of an unlawful assembly is guilty of any offence committed by any member in the prosecution of the common object of the assembly; and by S. 396, if murder is caused in the commission of a dacoity, every dacoit is treated as a principal. (See note under S. 149.)

"*Instigation.*" According to the definition in the Code, abetment is the procuring and promoting the doing of a thing by instigation, conspiracy, or aid, or by concealment intended to facilitate the doing of a thing. There is some difference of opinion as to the degree of incitement necessary to render a person liable for abetment. In the case of the *Queen* v. *Jhotee Sing and others*, 1 W. R., 246, prisoners were present as passive spectators at a case of Suttee, but no active part in the act was brought home to them. It was found as a fact, that they had previous knowledge of the intended Suttee, and had gone there in consequence of the knowledge. Prisoners were convicted of abetment of suicide. Campbell, J., held, "The more important question remains behind; whether all persons in the position of the appellants are not by the mere act of going to a Suttee, and giving it *by their presence* their countenance and support, guilty of abetment of Suttee, even though nothing more active can be proved against them." It would seem to be very dangerous to let it be supposed that, so long as it cannot be proved that a man brought the fagots or the fire, he may give the utmost moral and actual support to a Suttee with impunity. Practically, I believe, spectators are most powerful abettors. . . . . I am inclined to think that every man

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of education or intelligence who goes to a Suttee, and stands an unopposing and passively supporting spectator, does, by every step towards the Suttee, commit an act of abetment, and Kemp, J., held, supporting this view: 'It has been held by Judge Patterson, that all persons present at a prize-fight, having gone there with the purpose of seeing the prize-fighters strike each other, were principals in the breach of the peace'—*Queen* v. *Parkins*, O. & P., 537. The prisoners went to see a Suttee, an act which is declared by the legislature to be illegal. Their social position was such as might have been used with effect in preventing the offence from being committed, or, at all events, in dissuading the woman from immolating herself. They remained passive and unopposing spectators." This decision has been considered by Mr. Mayne as more in accordance with English rulings than the provisions of the Code (Mayne's Code, 208), and his view is corroborated by the case of the *Queen* v. *Gora Chand Gope and others*, 5 W. R., Cr. R., 45, where it was laid down by Peacock, C.J., "that although a man is present when a felony is committed, if he takes no part in it, and does not act in concert with those who commit it, he will not be a principal, merely because he did not endeavour to prevent it, or to apprehend the felon." So where a person was present at the commission of a murder, without any previous knowledge that such an offence was about to be committed, and being frightened did not interfere to prevent it, but remained a passive spectator, he was held not to be guilty of abetment of murder—*Queen* v. *Goburdhun Bera*, 6 W. R., Cr. R., 80. On the whole the proper rule seems to be that any instigation or act done with *intent* to procure the commission of an offence renders the person liable as an abettor and not otherwise, and whether the instigation was given or the act done for such an end, is a question of fact depending on the circumstances of the case.

"*Conspiracy*." Another form of abetment is, where persons enter into a conspiracy for the doing of a thing, and some overt act or illegal omission takes place in pursuance of the conspiracy. A mere conspiracy would not amount to abetment, and it would appear that if conspirators were detected before they had done more than discuss plans, adopt resolutions, and interchange promises of fidelity, they would not be liable as abettors (P. C. Note C, 29). Overt acts are those acts which may have been done by any one or more of the conspirators in order to effect the common purpose of the conspiracy (Arch., 811). There is no ruling defining what amounts to an overt act to be found in the Indian law books; but in England it has been held that a letter written by one conspirator is an act done to show the nature and tendency of the conspiracy (Ros., 386).

The following rule was laid down in England regarding the admissibility of evidence in trials for conspiracy:—"We are of opinion that, on the prosecution of a crime to be proved by conspiracy, general evidence of an existing conspiracy may, in the first instance, be received as a preliminary step to that more particular evidence by which it is to be shown that the individual defendants were guilty participators in such conspiracy" (Ros., 384.) This course has been adopted in India, and in the Umballa and Patna trials for conspiracy general evidence of the acts of the different parties, living in different districts of Bengal and the North-Western Provinces, was admitted to prove the conspiracy, and then the evidence against each particular person was taken to show his participation in the conspiracy.

The existence of a conspiracy being proved, a further question then arises, how far the acts of one conspirator can be given in evidence against another? In the case of the *Queen* v. *Mahommed Shuffee and others* (pp. 210, 354, 416, 498*), it was decided that the entries in the account books of one of the conspirators were, under S. 43, Act II, 1855, admissible as corroborative evidence of the facts stated therein against any of the conspirators, and in the case of the *Queen* v. *Ahmedoola* (p. 103*), the High Court decided as follows:—

* The pages referred to are those of the Reports of the trials published by Government.

"We find that he was cognizant of, and consenting to, the conspiracy and the acts done in furtherance thereof; and though it may not be possible to point to any one act in particular as proved to have been done by him directly in furtherance of the objects of that conspiracy, yet the conspiracy being proved, and his connection with it, the acts of each of his co-conspirators *done in furtherance of the common object are his acts*, and therefore to be held as evidence against him."

The same rule was laid down in the case of the *Queen* v. *Ameer Khan*, 17 W. R., Cr. R., 15. "Now the rule of law is that where several persons are proved to have combined together for some illegal purpose, any act done by one of the parties in pursuance of their original concerted plan is in the contemplation of the law the act of the whole: each party is an agent of the others in carrying out the objects of the conspiracy and doing anything in furtherance of the common design. This was determined in England in the case of *Rex* v. *Bowes*, cited by Mr. Justice Grose in *Rex* v. *Brisæ and Scott*, 4 East, 176, and cited to us by the learned Advocate-General, and the law has, from the period when that case was decided, been the settled law in England. It rests on a principle which is equally applicable to this country. There is not any peculiarity of English law in this matter, but it rests upon the general law which has been stated that where parties concert together and have a common object, the act of one of the parties done in furtherance of the common object and in pursuance of the concerted plan is the act of the whole of them.

Mere narratives of what has been done by a conspiracy, or other such statements not made in furtherance of the enterprise by one conspirator during the existence of a plot, are inadmissible against any conspirators, but the person making them. (Ros., 386-7; Taylor, L. Ev., Ss. 530-2.) By illustration (*c*), S. 10 of the Evidence Act if reasonable ground exists for believing that A has joined a conspiracy to wage war against the Queen.

The facts that A procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transferred from Delhi to G at Cabul the money which C has collected in Calcutta, and the contents of a letter written by H giving an account of the conspiracy,—are each relevant to prove the existence of that conspiracy and A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

"*Intentionally Facilitates.*" Where a person intentionally facilitates the commission of an offence by any act or illegal omission, he is an abettor; but mere "illegal omission" to give notice of an offence by a party not consenting is not treated as abetment, but an offence under Chap. X, as a contempt of the lawful authority of public servants. To bring an illegal omission within this Section it must be shown to be wilful, with the intention of facilitating the commission of the offence. The intention to aid is what constitutes guilt, whatever be the *motive*, whether it is prompted by mercenary motive, or from a desire to screen the offender, or otherwise. Thus, a policeman who not interfering, would suffer the perpetration of a murder in order to obtain a reward by the after apprehension of the offender, would seem to be liable. (Commr.'s 1st Rep., Ss. 211, 213.)

So it has been held that a constable who knowing that certain persons were about to be tortured in order to obtain a confession kept away is guilty of abetment—*Queen* v. *Kali Charn Gangooly*, 21 W. R., Cr. R., 11. Bedoo said to a cooly "I will see to this man." And afterwards referring to this cooly and others, said, "see these coolies refuse to obey the chowkeedar—Eshan, bring me a *dao*." Eshan did so, and Bedoo wounded the cooly. Held, Eshan guilty of abetment by facilitating the offence—*Queen* v. *Eshan*, 12 W. R., Cr. R., 52.

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The provisions of this Chapter only apply to offences under the Code, and not to acts not punishable under it; but under some local or special law unless they are distinctly extended—*Queen* v. *Kalimooddeen*, 7 W. R., Cr. R., 53; *Queen* v. *Ramlugun Lall*, 7 W. R., Cr. R., 14.

By *Article* 71, Act V, 1869, Ss. 107 and 108 are extended to certain offences.

By S. 36, Act XVIII, 1869, whoever abets within the meaning of the Penal Code any offence punishable by that Act, is liable to the punishment of the offence itself.

As pointed out under S. 4 offences committed on the high seas by European British subjects are punishable not under the Code, but under the law of England. In *Reg.* v. *Elmstone and others*, 7 Bom. R., Cr. Ca., 89, the question arose under which law a person should be punished for abetting an offence committed by a European British subject on the high seas more than three miles from shore, and it was held as an accessory before the fact under English law and not under the Code. See note under Ss. 121A, 294A, and 304A, and S. 13, Act XXVII, 1870.

Abettor.

108. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations.

(*a.*) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(*b.*) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound, A is guilty of instigating B to commit murder.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations.

(*a.*) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here, A, whether the act be committed or not, is guilty of abetting an offence.

(*b.*) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(*c.*) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing

what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(*d.*) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith believing it to be A's property. B, acting under this misconception, does not take dishonestly and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder, and as A instigated B to commit the offence, A is also liable to the same punishment.

In Ameer Khan's case (9 Beng. R., 36), defendant was accused of abetting the waging of war by conspiracy for the purpose. At the trial it was urged that it amounted to abetment of an abetment. Couch, C.J., held "I do not think that the offence committed can be regarded as the abetment of an abetment. It was not that Amed Khan abetted other persons to abet the waging of war; he engaged with other persons in a conspiracy to wage war and did acts in furtherance of the conspiracy."

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

Illustration.

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this Section, and is liable to the punishment for murder.

Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment.

109. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

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SS. 110, 111.

Illustrations.

(*a.*) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in S. 161.

(*b.*) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(*c.*) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order to that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

That he, on or about ——, at ——, abetted (here enter the offence), the act abetted being committed in consequence of the abetment of the accused A.B., there being no express provision in the Code for the punishment of such abetment* and that . . . . under S. 109 and S. (here enter Section under which offence is punishable) of the I. P. Code, &c. (1 W. R., Cr. L., No. 103, 1864; 3 W. R., Cr. L., 5, No. 478, 1865).

It is necessary to prove abetment, and that the act abetted was committed in consequence of the abetment,—that is, done in endeavouring to effect what the abettor intended. So where a person was charged with abetment under this Section for keeping watch at the door of a house while a murder was committed within, the High Court considered he should have been charged under S. 114, as the murder could not be said to have been committed in consequence of such abetment—6 W. R., Cr. L., 4, No. 1410, 1866. So in a case of Suttee, A ordered the pile to be lighted, B did not then co-operate, but afterwards when the women fled from the pile induced her to return, A was held guilty of abetment of culpable homicide, but B of suicide only—*Queen* v. *Saehbloll and others*, 1 W. R., 174.

This Section only applies to cases of abetment which are not expressly provided for in the Code—2 W. R., Cr. L., 9, No. 85, 1865; 5 W. R., Cr. L., 1, No. 109, 1866; *id.*, 5, No. 242, 1866. So it would not apply to abetting the waging of war—Ss. 121, 122, 123; or to abetting the escape of State prisoners—S. 130; or to abetting mutiny—S. 132; or to abetting an assault of a soldier or sailor on his superior officer—S. 134; or to abetting insubordination by the same—S. 136.

A person who abets an offence punishable with whipping is liable to whipping if the offence be committed in consequence of the abetment—2 W. R., 271, Cr. L. No. 425, 1864.

Punishment of abetment if the person abetted does the act with a different intention from that of the abettor.

110. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

Liability of abettor when one act is abetted and a different act is done.

111. When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had

* It would appear from the H. Ct. L. No. 1196, 4th November 1867, to the Judge of Jessore, MSS., that the words "there being no express provision made by the Code for punishment of such offence" should not be inserted.

directly abetted it; provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid, or in pursuance of the conspiracy which constituted the abetment.

Proviso.

Illustrations.

(*a.*) A instigates a child to put poison into the food of Z and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

(*b.*) A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act and not a probable consequence of the burning.

(*c.*) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

To bring a case within this Section there must be proof of abetment, prove that the act was committed under the influence of the abetment from the circumstances attending it, that it was a probable consequence of it. Where several people turned out to beat a man, and one of them killed him, it was held that, as the parties intended to hurt deceased only, they would be liable for any hurt or even grievous hurt committed; but the causing death to the deceased went so far beyond the purpose for which they turned out, that it could not be said to have been a probable consequence of the abetment—*Queen* v. *Goluck Chung and others*, 5 W. R., Cr. R., 75. So when A ordered B and C to seize and forcibly taken D to the house of a person in the village to answer a charge of being pregnant, and told them they would be compelled to beat her in order to confess, and D was so tortured and beaten that she died,—A was convicted of abetment of grievous hurt—*Queen* v. *Doorgessur Surmah*, 7 W. R., Cr. R., 97.

An offender is liable to whipping under this Section if the offence committed is punishable with whipping (2 W., 27, No. 452, 1864).

Abettor when liable to cumulative punishment for act abetted and for act done.

112. If the act for which the abettor is liable under the last preceding Section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Illustration.

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

Liability of abettor for an effect caused different from that intended by the abettor.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in con-

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sequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

Illustration.

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z, Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

Abettor present when offence is committed.

114. Whenever any person who if absent would be liable to be punished as an abettor is present when the act or offence for which he would be punishable in consequence of his abetment is committed, he shall be deemed to have committed such act or offence.

Charge.—That he was present abetting the abduction of A B, with intent that she might be compelled to marry against her will; he, under S. 114 of the Penal Code, committed the said abduction, an offence punishable under S. 366 of the Penal Code, &c. (3 W. R., Cr. L., 9 No. 508, 1865). When the prisoner has been charged direct with the commission of an offence, a second head, charging him as guilty under S. 114, is not necessary, as S. 114 is simply declaratory. (H. Ct., Cr. L. No. 1196, 1867, to Judge of Jessore, MSS.).

There is no distinction in the Code between principals of the first and second degree. By S. 34, where a criminal act *is done* by several persons, each is liable as if it were done by himself alone; so that if two or more persons be present, aiding and abetting in the commission of a murder, each would be tried and convicted as a principal, though it might not be proved which of them actually committed the act. This Section appears to refer to cases somewhat different when a person by abetment, previous to the commission of the act, renders himself liable as an abettor, is present when the act is committed, but takes no active part in the doing of it—*Queen* v. *Camoo Gazee*, 4 W. R., Cr. R., 123. So the Madras High Court has held, 4 Mad. J., 158, No. 459, 1859; 4 Mad. R., xxxvii.

"S. 114 of the Penal Code simply provides for the punishment of what the English law calls principals of the second degree. A person present abetting an offence is to be *deemed* to have committed the offence, though he does not in fact do so any more than a principal in the second degree does. Hence 'all who are present aiding and assisting a man to commit a rape are principal offenders in the second degree whether they be men or women' (1 Ross., 905), and hence Lord Audley (3 Howell's State Trials, 401) was convicted as a principal of a rape on his own wife, because he aided another to ravish her. There are several moves of abetment defined in the Penal Code. One is instigating another to commit an offence. If A instigates B to murder Z he commits abetment; if absent he is punishable as an abettor; and if the offence is committed, then under S. 109; if present, he is by S. 114 to be *deemed* to have committed the offence and is punishable as a principal. Another move of abetment is by intentionally aiding, by any act or illegal omission the doing of an offence. A aids B to murder Z; if absent he is punishable as an abettor, and may be liable under S. 109; if present then he is deemed as much to have committed the offence as if he had struck the fatal blow. The meaning of S. 114 is that if the nature of the act done constitutes abetment then if present the abettor is deemed to have committed

the offence though in point of fact another actually committed it." See also *Reg.* v. *Chima*, 8 Bom. R., Cr. C., 164

It is not necessary that the act should be committed in consequence of the abetment. Where A kept watch at the door of a house while a murder was being committed inside, he was held guilty of murder under this Section, though the murder could not be said to have taken place in consequence of the abetment—6 W. R., Cr. L., 4, No. 1410, 1866. In this case there is nothing recorded to show the person would have been liable if *absent*, and I think he was a principal under the provisions of S. 34, and not under this Section. So it has been held that where a person admitted that he was an abettor and present at the time of the offence, he was liable under this Section—*Queen* v. *Pir Mahomed*, 17 W. R., Cr. R., 52. See Notes under Ss. 108, 109, 110, 111, 113.

Abetment of an offence punishable with death or transportation for life if the offence be not committed in consequence of the abetment.

115. Whoever abets the commission of an offence punishable with death or transportation for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

If an act which causes harm be done in consequence of the abetment.

Illustration.

A instigates B to murder Z. The offence is not committed. If B had murdered Z he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years and also to fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

Offences punishable with death or transportation for life are those falling under Ss. 302, 303, 305, 396, 121, 132, 194, 226, 311, 75, 122, 125, 128, 130, 131, 222, 225, 238, 255, 307, 311, 313, 314, 326, 329, 364, 371, 376, 377, 388, 389, 394, 396, 400, 409, 412, 413, 436, 438, 449, 459, 460, 467, 472, 474, 475, 477.

Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.

116. Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description pro-

vided for that offence, for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both; and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.

Illustrations.

(*a.*) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this Section.

(*b.*) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this Section, and is punishable accordingly.

(*c.*) A, a police officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(*d.*) B abets the commission of a robbery by A, a police officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

"*Prevent the Commission of such offence.*"—Where the accused was charged under this Section with having abetted bribery under S. 161 by offering a bribe to a Civil Surgeon, it was held that he was not liable to the enhanced punishment under the latter part of the Section, as the Surgeon was not specially directed as a public servant to prevent the commission of bribery—*Queen* v. *Ramnath Surma Biswas*, 21 W. R., Cr. R., 9.

117. Whoever abets the commission of an offence, by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Abetting the commission of an offence by the public or by more than 10 persons.

Illustration.

A affixes in a public place a placard, instigating a sect consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this Section.

If a person harangues a mob, intending to excite them to commit violence against an individual, he would be punishable for it under this Section.

There must be such a unity of purpose among the ten individuals as would, if the offence be committed, render them members of an illegal assembly. So where a person abetted twelve coolies to break their contracts, it was held that as each breach of contract was a separate and distinct offence, the abettor abetted *twelve offences* by twelve persons, and not one offence by twelve persons, and so was not punishable under this Section—3 W. R., Cr. L., 24, No. 821, 1865.

In the Original Code the following example was inserted:—

"A inserts in a newspaper an article advising soldiers to shoot every Commanding Officer who uses them harshly. A has committed the offence defined in the clause."

Concealing a design to commit an offence punishable with death or transportation for life.

118. Whoever intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with death or transportation for life, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years; or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years: and in either case shall also be liable to fine.

If the offence be committed.

If the offence be not committed.

Illustration.

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this Section.

For conviction there must be proof of the existence of a design to commit an offence punishable with death or transportation for life (see Note on S. 115), that the accused was aware of it, and that he *voluntarily* concealed its existence by doing something, or by making a misrepresentation, or by omitting to inform, and the omission was illegal (S. 43), intending or knowing it was likely that he would facilitate the commission of the offence by doing so. Mere concealment without such intention or knowledge of likelihood is not an offence under this Section, but under Chapter X. In the *Queen* v. *Jhugroo and others*, 4 W. R., Cr. R., 2, prisoner was convicted under this Section for knowing of a design to commit a dacoity, and voluntarily concealing it with intent to facilitate the commission of the offence. The report does not show whether the concealment was by act or omission, and if omission, whether prisoner was legally bound to inform of the existence of the danger or not.

The difference between this offence under this Section and abetment is stated by the Commissioners (1st Rep., S. 210). The distinction between the "illegal omission" of a person which facilitates an offence and constitutes abetment, and the "concealment" of a person which facilitates the commission of an offence under this Section, is palpable. Under S. 107, the omission respects what is either doing or about to be done at the present time, and could not be done in the case given in the illustration, but for the omission which is all but participation, in this Section the concealment refers to a *design* to commit an offence at a future time, the commission of which the concealment may in a manner facilitate by not exciting that attention which would probably prevent it; but this is a remote and precarious aid, and though deserving of punishment, is surely different from that which is supposed to be rendered in the former case, conducing by immediate influence a positive efficacy to the commission of the offence.

Illegal omissions.—By S. 9, Act XIV, 1868, every brothel-keeper is bound to furnish information on any subject relating to his business to such officers in such manner and at such times as the local Government shall prescribe.

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By S. 21, Act XXVII, 1871, every village headman and village watchman in which any person of a tribe, class or gang, which has been declared criminal, reside, and of every owner and occupier of land on which any such persons reside, are bound to give the earliest information in his power to the nearest Police-station of the failure of any such person to appear and give information to form a register, and of the departure of any such from such village or land as the case may be.

And it is the duty of every such headman, watchman, owner or occupier of land to give similar information of the arrival at such village or on such land (as the case may be) of any persons who may be reasonably suspected of belonging to any such tribe, class or gang.

By S. 90, Criminal Procedure Code, every village headman, village watchman, owner or occupier of land, or the agent of any such owner or occupier and every native officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, is bound forthwith to communicate to the nearest Magistrate or to the officer in charge of the nearest Police-station any information which he may obtain respecting

(*a*) the residence of any notorious receiver or vendor of stolen property at the village of which he is the headman or watchman, or in which he owns or occupies land or collects rent or revenue as the case may be;

(*b*) the resort to any place within the limits of such village of any person or persons known or reasonably suspected of being a thug or robber;

(*c*) the commission or intention to commit Suttee or other non-bailable offence at or near such village;

(*d*) the occurrence of any sudden or unnatural death.

By S. 96, Criminal Procedure Code, every Police officer receiving information of a design to commit a cognizable offence, is bound to communicate such information to the Police officer to whom he is subordinate, and to any other officer whom it may concern to prevent or take cognizance of the commission of any such offence.

See Note under S. 176.

A public servant concealing a design to commit an offence which it is his duty to prevent.

119. Whoever, being a public servant, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence which it is his duty as such public servant to prevent, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both; or if the offence be punishable with death, or transportation for life, with imprisonment of either description for a term which may extend to ten years; or, if the offence be not committed, shall be punished with imprisonment of any description provided

If the offence be committed.

If the offence be punishable with death, &c.

If the offence be not committed.

for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

Illustration.

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this Section.

Concealing a design to commit an offence punishable with imprisonment.

120. Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any respresentation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

If the offence be committed.

If not committed.

CHAPTER VI.

OF OFFENCES AGAINST THE STATE.

Waging or attempting to wage war, or abetting the waging of war against the Queen.

121. Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or transportation for life, and shall forfeit all his property.

Illustrations.

(*a.*) A joins an insurrection against the Queen, A has committed the offence defined in this Section.

(*b.*) A in India abets an insurrection against the Queen's Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Queen.

Prosecutions for offences under this Chapter, except under S. 127, cannot be instituted except with the sanction of Government or other authorized person. (Cr. Pro. Code, S. 465.)

Charge.—That he, on or about ——, at——, waged war against the Queen, and ..... an offence under S. 121 of the Indian Penal Code (Cr. Pro. Code, Schedule III).

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Attempting to wage war, and abetting the waging of war, should be charged directly under this Section, and not under Ss. 109, 114, or 511, which do not apply to any of the offences described above, but only to cases of abetment or attempts to commit offences not *specially* provided for in other Sections of the Code.

In Ameer Khan's case (9 Beng. R., 36) defendant was convicted on the following charge by the Patna Court:—

"That he, on or about the month of May 1862, at Calcutta, abetted the waging of war against the Queen, and that he has thereby committed an offence punishable under S. 121 of the Indian Penal Code and within the cognizance of the Court of Sessions." In appeal it was urged that the proceedings showed a want of jurisdiction. Couch, C.J., held:—"There is no doubt an apparent want of jurisdiction on the face of the proceedings, because both the charges upon which the conviction has taken place allege that the abetment was 'in Calcutta,' and there is this apparent inconsistency that the Sessions Court at Patna has found the accused guilty of an offence committed at Calcutta. That is an error or defect on the charge which is cured by S. 426 of the Code of Criminal Procedure. The charge might and ought properly to have been a charge of the offence of abetment at Patna; and then evidence might have been given not merely of what he did at Calcutta, but of what the other conspirators did at Patna. It cannot be said that the defect is not one to which S. 426 would apply, or that the accused has been in any way prejudiced in his defence by the erroneous statement of the abetment having taken place in Calcutta, when the evidence was sufficient to show an abetment at Patna. In truth, the proper mode of framing the charge would have been that all the conspirators should have been jointly charged with the conspiracy, it being alleged to have been an abetment at Patna, and then the acts of the various conspirators in Calcutta and Patna might have been given in evidence, and there would have been jurisdiction to try the accused at Patna if any act were done in Patna."

In the same case the law as to the district in which the offence of abetment by conspiracy should be tried was clearly laid down. Couch, C.J., commenting on the objection that Ameer Khan could not be tried at Patna as he was living in Calcutta, at the time said:—"Now the rule of law is that where several persons are proved to have combined for some illegal purpose, any act done by one of the parties in pursuance of the original concerted plan, and with reference to the common object, is in the contemplation of law the act of the whole. Each party is an agent of the other in carrying out the objects of the conspiracy and doing anything in furtherance of the common design. This was determined in England in the case of *Rex* v. *Bowes*, cited by Grose, J., in the *King* v. *Brisæ*, and cited to us by the learned Advocate-General, and the law has, from the period when that case was decided, been the settled law in England. It rests on a principle which is equally applicable to this country. There is not any peculiarity of English law in this matter; but rests on the general law which has been stated that where parties concert together and have a common object, the act of one of the parties done in furtherance of the common object and in pursuance of the concerted plan is the act of the whole of them. To apply that principle to the present case, if it were proved that Ameer Khan engaged in a conspiracy to wage war against Her Majesty, acts done within the district of Patna by any one of the persons with whom he so engaged in pursuance of the original concerted plan and with reference to the common object would be, in point of law, the acts of the accused Ameer Khan; and it would be the same as if he himself had done the acts within the district of Patna, although at the same time he might not be there and might be remaining at Calcutta. . . . . There is another way in which the matter may be regarded, which equally affords an answer to the objection of want of jurisdiction. In this case the acts of abetment of which the Sessions Court has found the prisoner guilty are the sending of money on several occasions from Calcutta to Patna in furtherance of the common design that the money should be made

use of in waging war against Her Majesty. Now the money was received at *Patna* and sent by Ameer Khan there through *hoondies* as proved by the evidence; and until that money reached its destination, the sending in point of law continued on the part of Ameer Khan, the money was in the process of being sent to the persons by whom it was intended to be received until they received it at Patna, and there was in that view of the case a sending of the money by Ameer Khan within the district of Patna where he has been tried and convicted.

By *illustration (d)*, S. 66, Criminal Procedure Code, if A, B, C and others combine together to abet the waging of war against the Queen, any of the conspirators may be tried in any district in which acts were done by any one of the persons with whom he or they conspired in pursuance of the original concerted plan and with reference to the common object.

The Authors of the Code give as their reasons for making abetment of waging war a special offence (Note C., 28): "We have . . . . made the abetting of hostilities against the Government in certain cases a separate offence, instead of leaving it to the operation of the general law laid down in the Chapter on abetment. We have done so for two reasons. In the first place war may be waged against the Government by persons in whom it is no offence to wage such war,—by foreign princes and their subjects. Our general rules on the subject of abetment would apply to the case of a person residing in British territories who should abet a subject of the British Government in waging war against that Government; but they would not reach the case of a person who, residing in the British territories, would abet the waging of war—any foreign prince against the British Government. In the second place we agree with the great body of legislators in thinking that though in general a person who has been a party to a criminal design which has not been carried into effect ought not to be punished so severely as if that design had been carried into effect; yet an exception to this rule must be made in respect to higher offences against the State." The Section as it then stood was, "whoever wages war against the *Government of any part of the territories of the East India Company*, or attempts to wage such war, or by *instigation, conspiracy, or aid* previously abets the waging of such war, he shall be punished with death, or transportation for life, or *imprisonment of either description for life*, and shall forfeit all his property." The parts italicized are not in the present Section, but only the first two changes are important. Of these the first was due to the assumption of India by the British Government, and the second has narrowed the scope of the Section in requiring proof of an overt act, in addition to proof of a conspiracy, in order to constitute the offence of abetment—*Queen* v. *Mahomed Shuffee and others*, 456; P. C. Note C., 29.

The words "wages war" have not been defined in the Code; and the exact meaning to be attached to them has been a subject of discussion in all the trials which have taken place since the introduction of the Code. In the case of the *Queen* v. *Mahomed Shuffee and others*, prisoners, British subjects, were charged with attempting to wage war against the Queen, and abetting the waging of such war during the years 1861-1862, 1862-1863, by traitorously furnishing the enemies of the British Government at Sittana and Mulka with supplies of men and money for the purpose of waging war against the Queen* (p. 461). In defence it was urged that the charge, as laid, did not constitute an offence under S. 121, which only applied to cases where persons owing allegiance to the Queen attempted to wage war against the Queen *within British territories*, and aided or abetted in the waging of such war, in other words, attempted or abetted an *insurrection* against the Queen (p. 446). This plea was overruled, and the Section was held to embrace *every description of war, whether by insurrection or invasion, or war beyond our territories; and complicity in and abetment of insurrection, invasion, or foreign war* (p. 1461); and further, that a British subject residing in British territory, who abets

* Reference is here made to the report of the trial at Umballa published by the Government of the North-West Provinces.

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the waging of war against the British Government outside British territory, is guilty, no matter whether the British Government takes the initiative and invades the hostile territory or awaits the attack of the enemy, or whether the persons waging war are *foreigners* or *persons owing allegiance to the Queen* (p. 465). In the case of the *Queen* v. *Ahmedoola* the prisoner, a British subject residing in Patna was charged with attempting to wage war; abetting the waging of war by the Sittana fanatics beyond British territory; abetting an attempt to wage such war; abetting the collection of men with the intention of waging war; and by act and illegal omission concealing the existence of a design to wage war, intending that such concealment would facilitate the commission of the offence. At the Court of Session prisoner was convicted and sentenced to death. On the case being referred to the High Court, it was urged that nothing amounting to an offence under this Section had been established; that from the remarks of Messrs. Macpherson and Morgan in their edition of the Penal Code, and the illustrations to S. 121, it was clear that the words "waging war" meant an insurrection or rebellion *within* British territories, and had no reference to a war waged by *foreign enemies*, or by *parties owing* allegiance to the Queen, if such war was waged *outside British territories;* that prisoner had been acquitted on the first count, but improperly convicted on the others, because, even if assistance had beeen rendered, it had been given to parties *not within the British territories*, and it was therefore immaterial whether such parties were foreign enemies or persons owing allegiance to the Queen. The High Court, Trevor, C.B., and Loch, G., (Justices) held as follows:—

"The contentions of the learned Counsel for the prisoner cannot, we think, be sustained. The prisoner is admittedly a subject of the British Government. By S. 2, Act I of 1849, which is still in force, he is answerable to the law for all offences committed by him within the territories of any foreign Prince or State, and by S. 3 of the Indian Penal Code, he is to be dealt with according to the provision of that Code for any act committed beyond the territories vested in Her Majesty by the Statute 21 & 22 of Vic., c. 106, in the same manner as if such act had been committed within the said territories; whether, therefore, the acts which the prisoner did were wholly within or wholly without, or partly within or partly without, the territory of Her Majesty, if they together amount to an offence under the Code, he is liable to be tried by the Courts of this country. Looking, therefore, at the whole of the evidence which we have selected as bearing on the case of the prisoner . . . . we think that the fact of the existence of a conspiracy at Patna, to assist *subjects of the British Government* in waging war against that Government, is proved; that in furtherance of that conspiracy a *Jehad* against the Government was preached, and that men and money were forwarded across the frontier. We have evidence that some of the men joined the ranks of the combatants at Sittana, and fought against the British Government; we have evidence also that money in gold mohurs and hoondees for the support of these rebels were remitted to Mahomed Jhaffer of Thanasser and Mahomed Shuffee at Umballa; we find that the prisoner was a constant attendant at the preaching in the house of Abdool Ruhim at Patna proclaiming a *Jehad;* we find that he was cognizant of and consenting to the conspiracy and the acts in furtherance thereof; and though it may not be possible to point to any one act in particular as proved to have been done by him directly in furtherance of the objects of that conspiracy, yet the conspiracy being proved, and his connection with it, the acts of each of his co-conspirators, done in pursuance of the common object, are his acts, and therefore to be held in evidence against him. We think that the evidence before us is sufficient to support the conviction of the prisoner under S. 121 of the Penal Code upon the second count of the charge. (Govt. Rec. Vol. XLII, 103; 2 W. R., Cr. R., 60.)

It will be seen that the High Court in Calcutta only decided that persons owing allegiance to the Queen, who abetted the waging of war by *British subjects* beyond the frontier, are guilty of an offence under this Section, and expressed no opinion as to whether abetting a similar act committed by

foreigners not owing allegiance to the Queen amounts to an offence; a point which was discussed in connection with Explanation 3, S. 108, and decided in the affirmative by the Judicial Commissioner of the Punjab as noticed above.

Prisoner (a potter), during the Sonthal rebellion, supplied the rebels with cooking vessels whilst they were plundering the villages in the neighbourhood; was tried and acquitted on the grounds that as the authorities were unable to afford him any protection, his only choice was to sell them or let them be taken by force—*Government* v. *Nuffer Pal Koomar*, 2 N. A. Rep., 1855, 945.

By S. 56, Act I, 1872, the Courts are bound to take judicial notice of the *commencement, continuation* and *termination* of hostilities between the British Crown and any other State, and may resort for aid to appropriate books and documents. In the Umballa trial printed records of the campaign were admitted as "appropriate documents" within the meaning of this Section—*Queen* v. *Mahomed Shuffee and others*, 464.

Under English law the fact of the persons adhering to foreign enemies may be proved by the production of the *Gazette* containing the proclamation if war be formally declared, or public notoriety is sufficient evidence of it (Arch., 632). This procedure was followed in the Umballa trial, and it was urged for the defence: 1*st*—That by S. 8, Act II, 1855, the *Gazette* was *primâ facie* evidence of certain persons being enemies of the Queen, and that they waged war with the British Government, and no more. It was, however, admitted in proof of the *losses* sustained in the war, and the particulars of the campaign—*Queen* v. *Mahomed Shuffee and others*, 462, 466. 2*nd*—That common notoriety unless reduced to proof on the record could not be received. This was overruled by the Judicial Commissioner, who holding that although notoriety could not be reduced to proof on the record, yet the Court could not ignore its existence, and taking judicial cognizance of the fact referred to the newspapers of the day as showing the acts of hostility committed by the Sittana fanatics, and the reasons which induced the Government to despatch an expedition against them—*Queen* v. *Mahomed Shuffee and others*. 446-67. So in the case of the *Queen* v. *Amiruddin*, the *Gazette* of India was admitted under Ss. 6 and 8 of Act II, 1856, to prove the commencement and continuance of hostilities between Government and the Mahomedan fanatics in the frontier—7 Beng. R., 70. Act II, 1856, has since been repealed, but the same evidence would now be admissible under Ss. 37 and 56 of the Evidence Act

By the law of England in cases of treason there must be, as a rule, two witnesses to prove the treason, both of them to the same overt act, or one of them to one and another of them to another overt act of the same treason, unless the defendant confess; but one witness is sufficient to prove a collateral fact, such as that the accused is a British subject (Arch., 627; Taylor, L. Ev., S. 872). The Indian law on this point is laid down in S. 134 of the Evidence Act, which declares that no particular number of witnesses shall in any case be required for the proof of any fact.

Forfeiture.—This is one of the punishments laid down, and from the wording it would seem that it will follow whether entered in the sentence or not.

Forfeiture passes the property absolutely. So where N & M were convicted of rebellion under Act XI, 1857, S. 1, and sentenced, the former to imprisonment for life, and have all his property confiscated, and the latter to have his property confiscated, it was held that the confiscation was absolute and did not depend on the amount of punishment, and the fact of the punishment being remitted by the Governor-General did not restore the property. Also that Government Paper was liable to confiscation, and that N's widow was not entitled to maintenance—*Gungah Bace* v. *C. S. Hogg*, 2 Ind. Jurist, 124

As pointed out under S. 62, forfeiture on conviction for treason refers back to the date of the offence; but whether it would for an offence under this Section is doubtful. The difficulty is that it has been decided that offences under this Section do not amount to treason. This point arose in the *Queen* v. *Amiruddin*, and Norman, C.J., held: "The answer to this argument is

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that the offences with which the prisoner stands charged are not treason or misprision of treason to which alone the provisions of 7 Wm. III, c. 3, s. 15, are applicable; but offences against the Penal Code.

In taking upon itself the administration of criminal justice in Bengal, Behar and Orissa, the English Government, so far from abrogating the existing law of the land and introducing English criminal law, undertook to administer the law as it stood,—*i. e.*, the Mahomedan criminal law,—subject to such modifications as might be found necessary. Accordingly we find that crimes committed by natives of India against the State, as by waging war against the Crown and the like outside Calcutta, were formerly punished not as treason under English law, but as offences against the law of the land,—*i. e.*, Mahomedan law,—after taking the futwas of the Mahomedan law officers. See case of *Meerza Beg*, who was declared liable to *Tazir* at the discretion of the rulers of the country, and sentenced to death in 1799—Harington's Analysis, Vol. I, 336,40 note; Reg. IV, 1790." But in this case the Chief Justice carefully avoids the effect of a European British subject being convicted under this Section.

By Illustration (*b*) S. 6, Act I, 1872, A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops attacked, and gaols broken in. The occurrence of these facts is relevant as forming part of the general transaction, though A may not have been present at the time.

See Note on S. 107, Conspiracy.

Note on S. 62 as to forfeiture.

121A. Whoever within or without British India conspires to commit any of the offences punishable by Section, 121, or to deprive the Queen of the sovereignty of British India or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years.

Explanation.—To constitute a conspiracy under this Section, it is not necessary that any act or illegal omission shall take place in pursuance thereof. (S. 4, Act XXVII of 1870.)

No charge of an offence punishable under any of the said Ss. 121A., 124A, and 294A, shall be entertained by any Court unless the prosecution be instituted by order of, or under authority from, the Local Government. (S. 14, Act XXVII of 1870).

Collecting arms, &c., with the intention of waging war against the Queen.

122. Whoever collects men, arms or ammunition, or otherwise prepares to wage war with the intention of either waging, or being prepared to wage war against the Queen, shall be punished with transportation for life, or imprisonment of either description for a term not exceeding ten years, and shall forfeit all his property.

Concealing with intent to facilitate a design to wage war.

123. Whoever by any act, or by any illegal omission, conceals the existence of a design to wage war against the Queen, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The proof required is almost the same as that under S. 118. In the trial of the *Queen* v. *Ahmedoola* at Patna, the Court of Session, in convicting the prisoner under this Section, expressed an opinion that a person owing allegiance to the British Government was bound to reveal the existence of a conspiracy having for its object the waging of war against the Queen. The High Court did not convict the prisoner on that charge, and the point has not been finally determined. Under English law bare concealment of treason without any degree of assent amounts to an offence called misprision of treason, and at least two witnesses are necessary to support the case. It would therefore appear one witness in India would not be legally sufficient to support a charge under this Section. (Warton, L. Lex., 614; S. 28, Act II, 1855.)

Assaulting Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.

124. Whoever, with the intention of inducing or compelling the Governor-General of India, or the Governor of any Presidency, or a Lieutenant-Governor, or a Member of the Council of the Governor-General of India, or of the Council of any Presidency, to exercise or refrain from exercising in any manner any of the lawful powers of such Governor-General, Governor, Lieutenant-Governor, or Member of Council, assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes by means of criminal force or the show of criminal force, or attempts so to overawe such Governor-General, Governor, Lieutenant-Governor, or Member of Council, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

By S. 56, Act I, 1872, judicial cognizance must be taken of the names, titles, and authorities of the persons filling, for the *time being*, any of the offices of Governor-General, Lieutenant-Governor, or Member of Council.

124A. Whoever by words, either spoken or intended to be read, or by signs, or by visible representation, or otherwise, excites or attempts to excite feelings of disaffection to the Government established by law in

British India, shall be punished with transportation for life or for any term, to which fine may be added, or with fine.

Explanation.—Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause. (S. 5, Act XXVII, 1870.)

Waging war against any Asiatic power in alliance with the Queen.

125. Whoever wages war against the Government of any Asiatic power in alliance or at peace with the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with transportation for life, to which fine may be added; or with imprisonment of either description for a term which may extend to seven years, to which fine may be added; or with fine.

The waging of war may be beyond British territory. So where a person, dwelling in British territory, waged war against the Rajah of Munipore, a country lying beyond British India, he was convicted under this Section—*Queen* v. *Keifa Sing*, 3 W. R., Cr. R., 16.

Committing depredation on the territories of any power at peace with the Queen.

126. Whoever commits depredation, or makes preparations to commit depredation, on the territories of any power in alliance or at peace with the Queen, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used or intended to be used in committing such depredation, or acquired by such depredation.

Receiving property taken by war or depredation mentioned in Sections 125 and 126.

127. Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in Sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

Proof that the property has been received is necessary. Where there was proof of a criminal intent to receive, and a knowledge that the goods were stolen, but the goods remained in the *exclusive* possession of the thief, a conviction for *receiving* was not sustainable (Arch., 372). This Section therefore does not apply to cases where the property is *retained* by the depredators, and not transferred by them to other parties. A clause, rendering such persons seeking *refuge* in British territory, after committing depredations liable to punishment, was embodied in the Original Code; but has since been expunged. (Commr.'s 2nd Rep., S. 29.)

Guilty knowledge on the part of defendant must be proved, mere reason to believe is not, it appears, sufficient. (See Cr. Pro. Code, Ss. 166, 465.)

Public servant voluntarily allowing prisoner of State or war in his custody to escape.

128. Whoever, being a public servant and having the custody of any State Prisoner or Prisoner of War, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

It does not seem necessary to prove, the accused was bound as a public servant to take charge of the prisoner.

A State Prisoner is one whose confinement is necessary in order to preserve tranquillity in the territory of any Native State entitled to protection, or the security of the British dominions from foreign hostility or from internal commotion, and who has been confined by the order of the Governor-General in Council. (Reg. III, 1818, Preamble.)

A prisoner of war is one who is taken in arms in war.

Public servant negligently suffering prisoner of State or war in his custody to escape.

129. Whoever, being a public servant and having the custody of any State Prisoner or Prisoner of War, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Aiding escape of, rescuing, or harbouring such prisoner.

130. Whoever knowingly aids or assists any State Prisoner or Prisoner of War in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A State Prisoner or Prisoner of War, who is permitted to be at large on his parole within certain limits in British India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

There is no exception in favour of a wife who harbours her husband, such as in Ss. 136, 212, 216.

CHAPTER VII.

OF OFFENCES RELATING TO THE ARMY AND NAVY.

The provisions of this Chapter are intended to provide for the punishment of persons who, not being subject to Military law, exhort or assist those who are subject to Military law,—*i. e.*, soldiers or sailors in the Army or Navy of the Queen,—to commit military offences. Provisions of this nature are necessary, because the general law of abetment will not reach persons abetting Military offences, which are not punishable under the Code. (Commr.'s 2nd Rep., Ss. 31, 32.)

Abetting mutiny or attempting to seduce a soldier or sailor from his duty.

131. Whoever abets the committing of mutiny by an officer, soldier, or sailor, in the Army or Navy of the Queen, or attempts to seduce any such officer, soldier or sailor from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—In this section the words 'officer' and 'soldier' include any person subject to the Articles of War for the better government of Her Majesty's Army, or to the Articles of War contained in Act V of 1869. (S. 6, Act XXVII, 1870.)

Abetment of mutiny, if mutiny is committed in consequence thereof.

132. Whoever abets the committing of mutiny by an officer, soldier, or sailor, in the Army or Navy of the Queen, shall, if mutiny be committed in consequence of that abetment, be punished with death or with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetment of an assault by a soldier or sailor on his superior officer when in the execution of his office.

133. Whoever abets an assault by an officer, soldier, or sailor, in the Army or Navy of the Queen, on any superior officer being in the execution of his office, shall be punished with imprison-

ment of either description for a term which may extend to three years, and shall also be liable to fine.

Abetment of such assault, if the assault is committed.

134. Whoever abets an assault by an officer, soldier, or sailor, in the Army or Navy of the Queen, on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Abetment of the desertion of a soldier or sailor.

135. Whoever abets the desertion of any officer, soldier, or sailor, in the Army or Navy of the Queen, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Harbouring a deserter.

136. Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier, or sailor, in the Army or Navy of the Queen, has deserted, harbours such officer, soldier, or sailor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Exception. This provision does not extend to the case in which the harbour is given by a wife to her husband.

Deserter concealed on board merchant vessel through negligence of master.

137. The master or person in charge of a merchant vessel, on board of which any deserter from the Army or Navy of the Queen is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred Rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

Abetment of act of insubordination by a soldier or sailor.

138. Whoever abets what he knows to be an act of insubordination by an officer, soldier, or sailor, in the Army or Navy of the Queen, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Persons subject to Articles of War not punishable under this Code.

139. No person subject to any Articles of War for the Army or Navy of the Queen or for any part of such Army or Navy, is subject to punishment under this Code for any of the offences defined in this Chapter.

Wearing the dress of a soldier.

140. Whoever, not being a soldier in the Military or Naval service of the Queen, wears any garb or carries any token resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.*

CHAPTER VIII.

OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

Unlawful assembly.

141. An assembly of five or more persons is designated as an "unlawful assembly," if the common object of the persons composing that assembly, is—

First.—To overawe by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any Public Servant in the exercise of the lawful power of such Public Servant; or

Second.—To resist the execution of any law, or of any legal process; or

Third.—To commit any mischief or criminal trespass, or other offence;† or

Fourth.—By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

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* The offence of purchasing, &c., arms, ammunition, cloth, Military accoutrements, forage, &c., from a soldier, is punishable by the Mutiny Act.

† See Section 40.

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

To render any assembly an unlawful assembly it is necessary that it should consist of five or more persons, and that they should have for a common object one or other of the five objects stated in S. 141. So the illegal acts of one or two persons belonging to an assembly not unlawful in its origin is not sufficient to render the assembly unlawful—*Queen* v. *Dinobundo Rai and others*, 9 W. R., Cr. R., 19.

The fourth clause shows that persons may form an unlawful assembly in the prosecution of a legal object. Thus, where five persons were convicted of rioting under S. 147 for stopping a procession, the High Court held "The act of the defendants in assembling and forcibly preventing a procession on the ground that they had a right to do so, because it was a nuisance or annoyance to them or their community, was an act clearly fallen within Cl. iv, S. 141 of the Penal Code"—5 Mad. Rep., App., 5. But so long as the persons, whether five or more, do not commit any act of aggression or combine for that purpose, they are safe. Any number of persons would be perfectly justified in assembling for defensive purposes. So where defendants, ryots of a zemindary, refused to allow a purchaser's people to seal and carry away their grain, and for that purpose assemble in large numbers,—the High Court setting aside a conviction, said: "Further the defendants were in possession of the crops and grain which were the property of them or some of them, and if any one was seeking to enforce a right or a supposed right, it was the purchaser and his agents, and what the defendants did was by show of force to protect their own possession and prevent the purchaser from enforcing his supposed right"—4 Mad. Rep., lxv. So where a person was convicted of rioting, for going with others to prevent a bund being cut, Couch, C.J., held: "What appears to have taken place is, that the bund being about to be cut by the persons belonging to the other village, he went there and was with people who belonged to his own village, and who were endeavouring to prevent the cutting of the bund. He does not seem to have taken part in any assembly which was unlawful, what he apparently did was, endeavour to prevent any violence being used. He went there to do what persons had a right to do by endeavour to prevent mischief being done to property which belonged to them; and I think he cannot, under the circumstances stated, be considered to have been a member of any unlawful assembly so as to be answerable for any acts of violence which were committed by the assembly or any member of it in prosecution of the common object. The acts of violence committed in prosecution of the common object would be by the inhabitants of the village who were endeavouring to cut the bund"—*Birjoo Sing, Petitioner*, 19 W. R., Cr. R., 66. See also *Koylash Chunder Doss, Petitioner*, 20 W. R., Cr. R., 78.

If force or violence be used by a member of an unlawful assembly in prosecution of the common object, the graver offence of rioting is committed—*Queen* v. *Khemee Sing and others*, 1 W. R., Cr. R., 19.

Being a member of an unlawful assembly.

142. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

A person is not a member of an unlawful assembly unless he is aware of the *facts making* the assembly unlawful. His knowledge and intention may be proved by proof of facts which gave the assembly the character of an unlawful assembly, or that he was aware of circumstances reasonably tending to the apprehension that the object of the assembly rendered it unlawful. It would be sufficient to give proof of overt acts or of language used by the leaders or members passing among the assembly, manifesting the object, so as to make it obvious to every observer when such acts had taken place, or such language passed. The intention of the party joining the assembly is to be inferred from his cognizance of the facts characterizing the assembly as "unlawful," and the common purpose is a matter of inference from the overt acts of the members of the assembly, their language and gestures as proved in evidence. (Commr.'s 2nd Rep., S. 43.)

"*Or continues in it.*"—It is often a matter of importance to determine whether a person who has joined an unlawful assembly continues in it. Thus in *The Queen* v. *Kabil Cazee*, 3 Beng. R., Cr. C., 1, it appeared that a large body of men belonging to one faction waylaid another body of men belonging to a separate faction, and a fight ensued, in which a member of the first faction was wounded and retired to the side of the road taking no further part in the affray. Subsequently a member of the second party was killed. The question then arose whether the wounded man continued a member of the unlawful assembly up to his death and was decided in the negative. Norman, J., held: "The evidence shows that on the retreat of the cazees and before the renewal of the combat in which Baher Ali Mirza was killed, the prisoner Wahid Ali had separated himself from his faction and sat down apart from them. He probably no longer had the same common object as the members of the unlawful assembly from which he had separated himself. It does not appear that he continued to urge on the others. He was apparently solely occupied by his own suffering. He cannot be convicted under S. 149 unless he was a member of the unlawful assembly at the time of the committing the offence. We think the fair inference from the facts is that he had ceased to be so when the fatal wound was inflicted on Behar Ali Mirza, and therefore that he cannot be convicted or punished for an act committed by a member of that assembly under S. 149. It is plain that he was no longer co-operating with the others, and he had not the power to prevent or check the violence of the others as he might have had if he continued with them." Had it been shown that Wahid Ali had urged the members of his part by words or signs, the case would have been no doubt different.

Punishment.

143. Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Offences under this section and S. 153 are separate offences—*Gobind Chunder Roy, Petitioner*, 16 W. R., Cr. R., 70. See Illustration (*f*) to S. 454, Cr. Pro. Code.

See note under S. 147.

Joining an unlawful assembly armed with any deadly weapon.

144. Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The charge should state the common object of the assembly—4 W. R., Cr. L., 9, No. 1137, 1865; *id.*, No. 1150, 1865.

Formerly a person convicted under this Section could not also be convicted of house-trespass and mischief, which were not separate offences, but consequences of the unlawful assembly—*Queen* v. *Surroop Napit and others*, 3 W. R., Cr. R., 54. But he can now, see the cases cited under S. 143 and to Illustration (*f*), S. 454, Cr. Pro. Code.

Separate convictions and sentences for offences under this Section and S. 148 (on the same facts) are not illegal—*Sree Kissen* v. *Juglal and others*, 9 W. R., Cr. R., 5.

Joining or continuing in an unlawful assembly knowing that it has been commanded to disperse.

145. Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

By S. 480, Criminal Procedure Code, a Magistrate or Police officer in charge of a station can command an unlawful assembly to disperse.

For the manner of dispersing unlawful assemblies, see Chap. XXXVI, Cr. Pro. Code, which is extended by Act XI of 1874 to the Presidency Towns.

Force used by one member in prosecution of common object.

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Punishment for rioting.

147. Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

It is sufficient to charge the accused as guilty of rioting without describing the offence—1 W. R., Cr. L., 10, No. 1099, 1864.

Where two opposing parties are charged with rioting, both parties should not be tried together on joint charges; but each party should be charged and tried separately, as the two parties have no common object in view—*Queen* v. *Sheik Bazu and others*, 8 W. R., Cr. R., 47; *Queen* v. *Surroop Chunder Paul*, 12 W. R., Cr. R., 74.

The members of each faction can give evidence against their opponents—*Queen* v. *Mahomed Hossein*, 1 N. W. R., Selected Cases, 4.

A person convicted under this Section could not, under the old Procedure Code, be convicted for the minor offence of being a member of an unlawful assembly on the same facts—*Meelan Khulifa* v. *Dwarkanauth Goopto and others*, 1 W. R., Cr. R., 7. He can now, by Illustration (*f*), S. 454, Cr. Pro. Code, which is as follows:—

"A with six others commits the offences of rioting, grievous hurt, and assaulting a public servant engaged in suppressing riot. A may be separately charged with, convicted of, and punished for, offences under Ss. 147, 328, and 152 of the Indian Penal Code." This sets aside the ruling in the *Queen* v. *Ruttcoollah*, 7 W. R., Cr. C., 3; in the *Queen* v. *Nilrutten Sein and others*, 16 W. R., Cr. R., 45; and in the *Queen* v. *Goomanee*, 17 W. R., Cr. R., 59.

CHAP. VIII. Ss 148, 149.

To constitute a riot there must be an unlawful assembly. It does not amount to a riot if any number of persons being assembled for any lawful purpose quarrel suddenly, without any previous intention or design—*Government* v. *Doolub Mundul*, 2 N. A. Rep., 1852, 883. So when the evidence failed to establish anything like an unlawful assembly, a conviction was changed from rioting to one for affray, although death was caused to one of the persons—*Queen* v. *Phoolall Misser*, 12 W. R., Cr. R., 72.

Thirteen persons were charged with rioting, twelve acquitted, and one convicted. *Quære*, whether the verdict can be sustained, when the evidence points only to the thirteen arraigned and to no others, seeing that the Code says that five men at least must be concerned in order to constitute a riot—*Reg.* v. *Chemiapa Chetty*, 2 Ma. J., 129.

But where more than five persons, whose common object, as apparent from their acts, was, by means of criminal force, to recover possession of their cattle seized for trespass, took away their cattle by force, they were held guilty of rioting—*Queen* v. *Bokoo, and others*, W. R., 1864, Cr. R., 21.

See Cr. Pro. Code, S. 489, under which recognizance can be taken from a person convicted of rioting.

Rioting armed with a deadly weapon.

148. Whoever is guilty of rioting, being armed with a deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Charge.—That he, on or about the ——, at ——, was a member of an unlawful assembly, and did in prosecution of a common object of such assembly, *viz.*, in ——, commit the offence of rioting with a deadly weapon (or "with something which used as a weapon of offence was likely to cause death") to wit a —— and has thereby, &c.—8 W. R., Cr. L., 17, No. 887, 1867; W. R., Cr. L., 9, No. 1137, 1856; *id.*, 10, No. 1150, 1865.

The members of an unlawful assembly may be convicted and sentenced separately for an offence under this Section, and with voluntarily causing hurt, and voluntarily causing grievous hurt, if the hurt and grievous hurt are caused to different persons—*Queen* v. *Azgar and others*, 5 W. R., Cr. R., 19.

Following Illustration (*f*), S. 454, Criminal Procedure Code, referred to under last Section, it appears that, contrary to the *Queen* v. *Darzoolla Khan*, 9 W. R., Cr. R., 33, separate sentences can be passed for offences under this Section and S. 324 on the same facts, as laid down in the *Queen* v. *Kalli Chand and others*, 3 W. R., Cr. R., 33. See note on S. 144.

Every member of an unlawful assembly to be deemed guilty of any offence committed in prosecution of common object.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Charge.—That they, on or about ——, at ——, were members of an unlawful assembly, in prosecution of the common object of which, *viz.*, in ——, one of the members —— caused grievous hurt (or other offence) to ——, and that they are thereby, under S. 149 of the Indian Penal Code, guilty of causing the said grievous hurt, an offence, &c.—5 W. R., Cr. L., 1, No. 147, 1866. See a somewhat different form at 8 W. R., Cr. L., 17, No. 887, 1867.

Where a riot takes place between two parties, and the members of both parties are charged with an offence under this Section, they should not be all committed for trial on joint charges; but the members of each party should be committed separately, as the two parties can have had no common object—*Queen* v. *Sheik Buzu and others*, 8 W. R., Cr. R., 47; and the members of each party are capable of giving evidence against their opponents—*Queen* v. *Mahomed Hossein*, 1 N. W. R., Selected Cases, 4.

"*Knew to be likely*."—This Section does not apply to the case of persons who, being members of an unlawful assembly, voluntarily cause grievous hurt or any other offence; but to the case of persons who are members of an unlawful assembly at the time when some other member commits such an offence in prosecution of the common object of the assembly—2 W. R., Cr. L., 21, No. 344, 1865. Nor does it contemplate the case of a person not a member of an unlawful assembly committing an offence, nor of a member of an unlawful assembly committing an offence from some motive unconnected with the object of the assembly, but only to cases when the offence is committed by a member in prosecuting the intention of the assembly, or is such as the members knew to be likely to ensue in so doing—3 W. R., Cr. L., 8, No. 516, 1865. This is put very clearly by Alison. "But, on the other hand, it is no less worthy of notice that this holds only with such outrages as are the natural result of the common enterprise, and which all who engaged in it must have made up their minds to be indifferent to, when they once concurred in its adoption. It will not hold therefore with separate and independent acts of violence as are not so much the object or natural and usual consequence of the undertaking, as the result of an accidental and casual ebullition of wickedness on the part of some of the actors which went much beyond the common purpose of the assembly. Thus if a mob repair to a warehouse of grain with the intent to compel the dealer to sell at their own price, certainly all the measures calculated to constrain or intimidate his will are chargeable on all those present, as throwing stones, breaking open his doors, threatening or maltreating his own or his servant's persons or the like; but if taking advantage of the opportunity thus afforded, some individuals break into the building and commit theft or set it on fire, or murder the inmates, those ulterior and undesigned acts of violence can be stated only against the actual perpetrators." (Principles of Law of Scotland, 524.) Thus when the members of an unlawful assembly with a view to oust persons out of possession of certain lands attacked them, and one of them, who alone was armed with a gun, fired and killed a man, it was held others were not liable for murder, as they very probably thought the gun would not be used, and there was evidence to show that its use was due to the unforeseen resistance met with—*Queen* v. *Salid Ali*, 20 W. R., Cr. C., 5. So where six persons at first united in abusing another, and afterwards one of the six ordered him to be seized; three others executed the order, and in doing so killed the person abused; it was held that the remaining two defendants were not liable to punishment, as the party had no illegal object in common until the deceased was ordered to be seized, and the evidence went to show that they took no part in it, but were merely unarmed spectators—*Queen* v. *Foiz Ali and others*, 1 W. R., Cr. R., 20.

But if the prisoner's acts shew as stated above that he participated in the common object of the unlawful assembly, and an offence is committed which is a necessary or probable consequence of that object, he is liable. Thus where several persons joined an unlawful assembly, the members of which were armed with deadly weapons, such as spears, and in concert with them proceeded to attack persons in the enjoyment of their legal rights and caused death, they were all found guilty of murder—*Queen* v. *Nazoo Fukir and others*, 4 W. R., Cr. R., 26. So also where several persons armed with swords joined an unlawful assembly in attacking certain persons, and death ensued, they were found guilty of murder; although they did not join in the attack, but only encouraged the others by shouting "strike."—*Queen* v. *Dushruth Roy and others*, 7 W. R., Cr. R., 58. So where prisoners armed

assembled to carry off a woman, and one of them killed a person who resisted with a weapon similar to that with which they were all armed—*Golam Arfin*, 4 Ben. R., App., 47.

Hiring or conniving at hiring of persons to join an unlawful assembly.

150. Whoever hires or engages, or employs, or promotes or connives at the hiring, engagement, or employment, of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly, in pursuance of such hiring, engagement, or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

Knowingly joining or continuing in any assembly of five or more persons, after it has been commanded to disperse.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.—If the assembly is an unlawful assembly within the meaning of Section 141, the offender will be punishable under Section 145.

See Chap. XXXVI, Cr. Pro. Code, S. 480.

Assaulting or obstructing public servant when suppressing riot, &c.

152. Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses or threatens or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Wantonly giving provocation with intent to cause riot.

If rioting be committed.

153. Whoever malignantly or wantonly, by doing anything which is illegal, gives provocation to any person, intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in conse-

quence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

If not committed.

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand Rupees, if he or his agent or manager knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest Police station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

Owner or occupier of land on which an unlawful assembly is held.

In the *Queen* v. *Surroop Chunder Pal, &c.*, 12 W. R., Cr. R., 75, defendants were convicted by the Magistrate under Ss. 154, 155, inasmuch as a riot took place on their land, and their agent knowing of the design did not take all lawful means to prevent, it and when it did take place, did not do his best to disperse the rioters. On appeal, the Judge upset the conviction under S. 156, and upheld that under S. 164. He said:—"Now it is not attempted to be shown that their agent did anything more towards dispersing or suppressing the riot than telling the chowkeedar Seeboo to see that there is no row, and make haste to give information to the Police. Giving him the full benefit of this evidence, I cannot believe that this was all that he could do. Undoubtedly he might have taken active steps to stop the disturbance; and if he had done so, the serious results which followed might probably have been avoided. I therefore reject his appeal so far as regards the conviction under S. 154. It is of the utmost importance that all persons should understand that they are bound to use all lawful measures to prevent a breach of the peace on all occasions." On revision, the High Court set aside the conviction, and Norman, J., referring to the above extract, said:—

"For my part I fully concur in that observation; and it is not without some regret that I feel myself compelled to reverse the decision of the Judge, because where riot and bloodshed take place as the result of a stand-up-fight between the partizans of two rival zemindars, where, as is too often the case, and as the Magistrate has found was the case here, *lattials* are employed on both sides, there can be little or no doubt that the riot is, if not for the benefit of, at least mainly instigated by, the zemindars or their agents.

"If the finding of the first Court had stated, namely, that hired *lattials*, retained by each party, were members of the unlawful assembly, some of

them actively engaged as combatants on the side of the Pal defendants party, there could be no doubt of the propriety of the conviction under S. 154. There would be no doubt that the finding that such men were retained would have been quite sufficient in itself to justify the inference that the zemindars and their agents so far from using all lawful means in their power to prevent the riot had made preparations beforehand to enable their faction to take an effective part in it.

"The Judge finds that the riot was unpremeditated. He does not find what, if any, were the lawful measures to which Rakhal Doss Roy, the servant of the zemindar, could have resorted in order to suppress the riot or disperse the rioters. It is a fact that the Police were stationed in the village, and it is found by the Judge that news of the riot was sent to the Police by Rakhal Doss. It may be that Baboo Rakhal Doss Roy might have used his influence with the ryots of the Pal party, and by that influence might have induced them to disperse and cease from rioting. But there is nothing to show that he had any such influence, and could have induced them to disperse, or that he kept wilfully out of the way leaving the riot to take its own course."

In a prosecution under this Section, the record of the original riot case is not admissible—*In the matter of C. G. D. Betts*, 15 W. R., Cr. R., 6.

Liability of person for whose benefit a riot is committed.

155. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

In the case of *The Queen* v. *Harnath Roy*, 3 W. R., Cr. R., 54, the defendant, a zemindar residing at Cossipore in the 24-Pergunnahs, was convicted under this Section on account of a riot committed in Backergunge. On appeal, it was urged, (1) that the piece of land, the subject of the contention, was so small, that he could not be said to have been benefited by it; (2) that he was not liable, as he resided a long distance from the place in which the riot took place. The High Court held "I lay no stress on his distance at which the zemindar was residing from the scene of affray; his residence being in Cossipore, Calcutta, and the scene of the riot being in Backergunge. A zemindar leaving his estates and residing at the Presidency cannot avoid his duties and liabilities; and it is his business to appoint fit and proper persons to manage his local affairs, and to perform the duties imposed on him by the legislature. Moreover it is the zemindar's duty to be regularly acquainted with what goes on in his zemindary. Neither again am I prepared to accept as a general argument that the interest of the zemindary is to be measured or computed by the extent of land in dispute, and if the plot be of small extent he cannot be supposed to be benefited by its retention. . . . . .

"But the whole case turns on this . . . was the riot in the first place committed for the zemindar's benefit, or on his behalf? Further, did he, having reason to believe that such riot was likely to be committed, use all means in his power to prevent it from taking place, or suppress or disperse the same?

"I find the riot was unpremeditated . . . Had there been some complaint in Court, and had the matter in dispute been long left pending and undecided while angry passions were excited, the zemindar, it might be said, ought to have surmised that an affray was possible or probable. But if he knew nothing at all, or if he only knew that a dispute between his ryot and the ryot of another zemindar, about a crop grown on one beegah of land, had been referred to arbitration, there was really no reason why he should apprehend an affray, or why he should think of using means to suppress what was not apprehended.

"On the whole I am of opinion that the appellant cannot be fairly brought within the purview of S. 155. The dispute was about a small piece of land, and the cause of the dispute was the attempt to cut the crop. Not only is it probable that this attempt gave rise to a sudden dispute, but the witnesses for the prosecution pointedly speak of the occurrence as sudden and without premeditation.

"There is no reasonable or just ground, such as might be inferred without direct evidence had circumstances been different, that the zemindar ought to have known that an affray was pending or even probable; and consequently there is no good ground for punishing him, because, in the language of the latter part of the Section quoted, he did not use all lawful means in his power to prevent an unlawful assembly or riot from taking place."

Liability of agent of owner or occupier for whose benefit a riot is committed.

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

Harbouring person hired for an unlawful assembly.

157. Whoever harbours, receives or assembles, in any house or premises in his occupation or charge or under his control, any persons, knowing that such persons have been hired, engaged, or employed, or are about to be hired, engaged, or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term that may extend to six months, or with fine, or with both.

Being hired to take part in an unlawful assembly or riot.

158. Whoever is engaged or hired, or offers or attempts to be engaged or hired, to do or assist in doing any of the acts specified in Section 141, shall be punished with imprisonment of either description for a

term which may extend to six months, or with fine, or with both; and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which, used as a weapon of offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Or to go armed.

159. When two or more persons by fighting in a public place disturb the public peace, they are said to "commit an affray."

Affray.

An affray differs from a riot. The one cannot be committed in a private place, and does not require five or more persons; the other require at least five persons and can be committed in a private place.

160. Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred Rupees, or with both.

Punishment for committing affray.

CHAPTER IX.

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

A Judge or public servant, not removeable from his office without the sanction of Government, cannot be prosecuted as such Judge or public servant without the sanction of Government or some authorized person, and such sanction must be given before the commencement of proceedings. (Cr. Pro. Code, S. 466.)

The terms "judge" "public servant" have the meaning assigned to them by the Indian Penal Code (Ss. 19, 20). Act XI, 1874, s. 42.

All prosecutions against any Police officer and others for anything done or intended to be done under Act V, 1861, or under the Police powers thereby given, must be instituted within three months of the act complained, and after notice of at least one month has been given to the District Superintendent or Assistant District Superintendent of Police (Act V, 1861, S. 42). This protection is granted only in cases where the act complained of is done ostensibly and avowedly in pursuance of the act, and does not extend to acts altogether without law—*Queen* v. *Modhoosoodhun Banerjee*, 1 W. R., 60.

161. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show, in the

Public servant taking a gratification other than legal remuneration, in respect of an official act.

exercise of his official functions, favor or disfavor to any person, or for rendering or attempting to render any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanations.—"Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this Section.

It must be proved that the accused gave the person reason to believe that he was about to obtain the office. It must also be proved he expected to obtain it. (Commr.'s 2nd Rep., S. 66.)

"Gratification." The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government which he serves to accept.

Any commission on purchases by a public servant, or gratification on payment, the receipt of which is not specially sanctioned by Government is not a legal remuneration within the meaning of this Section. (B. G. Note, 16th July, 1865.)

"A motive or reward for doing." A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

The term reward is manifestly intended to apply to past services. What is forbidden generally is the receiving any gratification "as a motive" to do, or "a reward" for having done, any such thing as is described in the definition. (Commr.'s 2nd Rep., S. 67.)

Illustrations.

(*a.*) A, a Moonsiff, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favor of Z. A has committed the offence defined in this Section.

(*b.*) A, holding the office of Resident at the Court of a subsidiary power, accepts a lakh of Rupees from the minister of that power. It does not appear that A accepted this sum as a motive or a reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that power with the British Government. But it does appear that A accepted the sum as a motive or a reward for generally showing favor in the exercise of his official functions to that power. A has committed the offence defined in this Section.

(*c.*) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this Section.

The charge should state the nature of the office held by the accused, so as to make him a public servant (5 W. R., Cr. L., 8, No. 313, 1866), and the name of the person from whom the gratification (if obtained) was obtained—*Queen* v. *Setul Chunder Bagchee*, 3 W. R., Cr. R., 96. The following form has been prescribed by the Cr. Pro. Code.

That you being a public servant in the —— department directly accepted from *(state the name)* for another party *(state the name)* a gratification other than a legal remuneration as a motive for forbearing to do an official act, and thereby committed an offence punishable under S. 161 of the Indian Penal Code, &c.

All the motives with which a public servant is charged with taking an illegal gratification should not be stated in one head of charge. If it be necessary that they should all be charged, owing to a doubt as to which is proved, they should be charged in separate heads—4 W. R., Cr. L., 3, No. 904, 1865.

In order to support a conviction for receiving an illegal gratification as a public servant to influence a superior, it is not necessary to prove that the accused ever did or intended to influence his superior. It is sufficient, under Illustration (*c*) that he took the gratification for the avowed purpose of doing so, and that those who paid him did so not in his individual capacity but as one holding a public office which gave him access to his superior, and that they were induced to do so in the hope that his influence as a public servant would be exerted in their favor—*Queen* v. *Kallee Churn Sheristhadar*, 3 W. R., Cr. R., 10.

A person who accepts a gratification for exerting his influence with a public servant not as a public servant, but as a *private* individual, is not punishable under this Section but under S. 162—*Queen* v. *Oboy Churn Chuckerbutty and another*, 3 W. R., Cr. R., 19.

A Putwari was convicted of taking grain as a consideration for showing favour to the giver of it. *Held*, the should have been convicted under this Section and not under S. 165—*Queen* v. *Mudsooddeen*, 2 N. W. R., 148.

A person offering a public servant an illegal gratification for any of the purposes stated in the Section, is liable for abetment of an offence under this Section (Illustration (*a*), S. 109). The Authors of the Code remark (Note E, 36):—"We are of opinion that we have provided sufficient punishment for the public servant who receives a bribe. But it may be doubted if we have provided sufficient punishment for the person who offers it. The person who, without any demand, express or implied on the part of a public servant, volunteers an offer of a bribe, and induces that public servant to accept it, will be punishable as an instigator. But the person who complies with a demand, however signified on the part of a public servant, cannot be considered as instigating the public servant to receive the bribe. We do not consider such a person to be liable to any punishment."

By S. 2, Act XXXI, 1867, every officer and servant of a Railway Company is deemed a "public servant" within the meaning of Ss. 161, 162, 163, 164, and 165 of this Code.

By S. 3 the word "Government" in the definition of legal remuneration in this Section is, for the purposes of the Act (Act XXXI, 1867), to include a Railway Company.

Taking a gratification in order, by corrupt or illegal means, to influence a public servant.

162. Whoever accepts, or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt, or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show

favor or disfavor to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

A conviction under this Section cannot be had if the evidence does not show the person or persons from whom the gratification was obtained, or attempted to be obtained, &c., and the public servant who was to be influenced—*Queen* v. *Setul Chunder Bagchee*, 3 W. R., Cr., 69.

Taking a gratification for the exercise of personal influence with a public servant.

163. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favor or disfavor to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

An advocate who receives a fee for arguing a case before a Judge; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust; are not within this Section, inasmuch as they do not exercise or profess to exercise personal influence.

Punishment for abetment by public servant of the offences above defined.

164. Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding Sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration.

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.

165. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person, any valuable thing, without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a.*) A, a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty Rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred Rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(*b.*) A, a Judge, buys of Z, who has a cause pending in A's Court, Government Promissory Notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(*c.*) Z's brother is apprehended and taken before A, a magistrate, on a charge of perjury. A sells to Z shares in a bank at the premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

Public servant disobeying a direction of the law, with intent to cause injury to any person.

166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favor by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this Section.

Charge.—That you, on or about the ——— day of ———, at ———, did (or omitted to do *as the case may be*) ———, such conduct being contrary to the provisions of Act ——— Section ———, and was known by you to be prejudicial to ———; and thereby committed an offence punishable under S. 160 of the Indian Penal Code, &c. (Schedule iii, Cr. Pro. Code).

The charge should contain the Section of the Regulation or Act which was disobeyed—2 W. R., Cr. L., 2, No. 13, 1865.

Public servant framing an incorrect document with intent to cause injury.

167. Whoever being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Public servant unlawfully engaging in trade.

168. Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Trade —— exchange of goods for other goods, or for money. (Wharton, L. Lex., 938).

The Governor-General, or Governor, or any Member of Council, or any Collector, Supervisor, or other person employed or concerned in the collection of the revenues, or the administration of justice in the provinces of Bengal, Behar, and Orissa, or their agents or servants, or any one in trust for them, or any of the Judges of the Supreme Court, are forbidden to be concerned in any trade or traffic within or without British India (33 G. III, C. 52, S. 137; 3 & 4 Wm. IV, C. 85, S. 76); so the Board of Revenue collectively or individually is prohibited to be concerned in any trade or commerce (Reg. II, 1793, S. 46); so no Collector or Assistant can trade or be concerned in any commercial transaction (Reg. II, 1793, S. 18; Reg. V, 1795, S. 18; Reg. XXV, 1803, S. 17); so Judges of Zillah Courts are prohibited from being concerned in any commercial transaction (Reg. III, 1793, S. 2; Reg. II, 1814, S. 14); so the Administrator-General cannot trade or traffic for his own benefit (Act VIII, 1855, S. 49); so Police officers cannot trade, or keep any warehouse or shop, wholesale or retail, within the limits of the Thanna to which they are appointed (Reg. XX, 1817, S. 11).

So no Police or other officer or pound-keeper appointed under Act I, 1871, can directly or indirectly purchase cattle sold under the Act (S. 19, Act I, 1871). Where a Sub-Inspector was charged with having purchased a pony which had been impounded. Held he should have been convicted under this Section and S. 19, Act I, 1871, and not for criminal breach of trust—*Rajkisto Biswas, Petitioner*, 15 W. R., Cr. R., 52.

Members of the Civil Service may become shareholders in Companies; but cannot take any part in their management. (B. Dig., S. 3451.)

Public servant unlawfully buying or bidding for property.

169. Whoever, being a public servant, and being legally bound, as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly or in shares with others, shall

be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

All native officers and private servants and dependants of a Collector or Assistant Collector are prohibited from buying or bidding directly or indirectly for any land the Collector may dispose of at a *public* sale (Reg. II, 1793, S. 15; Reg. V, 1795, S. 15; Reg. XXV, 1803, S. 14); so all Judges of Zillah Courts are prohibited to buy or purchase any goods or commodities in British dominion for the purpose of remitting money to Europe (Reg. III, 1793, S. 3; Reg. II, 1803, S. 14); so also members of the Board of Revenue are similarly prohibited (Reg. II, 1793, S. 46); so also Civil Court Ameens or other officers are forbidden to buy any property sold by them under Act X, 1859. (Act X, 1859, S. 133.)

Personating a public servant.

170. Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office, or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under color of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Where a person, pretending to be a Police officer, reprimanded some villagers on account of the state of the roads in the vicinity, and obtained some small sums from them, a conviction under this Section was upheld, on the grounds that the act committed by the prisoner had some relation to the office he pretended to hold, as the Police are often deputed on such matters.—*Queen* v. *Sudanund Doss*, 2 W. R., Cr. R., 29.

By S. 5, Cap. 10, 5 G. IV, false personation of soldiers or seamen in order fraudulently to receive their pay, is penal, and where a person was charged with such an offence, and it was proved the person personated had no real existence, it was held that the prisoner could not be convicted (Ros., 430). From this it would appear that no offence is committed under the first clause of this Section unless there is such an office, or under the second clause, unless both the office and the person personated really exist.

Wearing garb or carrying token used by public servant with fraudulent intent.

171. Whoever not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred Rupees, or with both.

CHAPTER X.

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

S. 467 of the Code of Criminal Procedure declares that "a complaint of any offence described in Chapter X of the Indian Penal Code, not falling within S. 435 or S. 436 (of the Code of Criminal Procedure), shall not be entertained in any Criminal Court except with the sanction or on the complaint of the public servant concerned, or of his official superior." The offences described in Ss. 189 and 190 of this Code are, however, excepted from this prohibition—*Id.* The offences falling within Ss. 435, 436 of the Code of Criminal Procedure, which are also excepted, are the offences described in Ss. 175, 178, 179, 180 of this Code, and committed in the view or presence of any Civil, Criminal, or Revenue Court. Offences so committed may be summarily punished by fine not exceeding Rs. 200, or after regular trial *before another officer*, by such punishment as is prescribed by this Code.

With the exceptions specified, no Court is competent to try any person for an offence committed in contempt of its own authority—S. 473, Code of Cr. Pro.

In a case falling under S. 174, the Bombay High Court held, that the Magistrate who held the trial had no jurisdiction, because he was the Court against which the alleged contempt was committed, and the case was not protected by S. 474 of the Cr. Pro. Code—*Mahomed Ismael*, April, 17, 1873.

For the same reason the same Court held that the offence of intentionally giving false evidence in a judicial proceeding could not be decided by the Magistrate before whom the false evidence is alleged to have been given, the offence being an attempt to pervert the proceedings of the Court to an improper end, and as such, a contempt of Court—*Nowrangbeg and Dulabeg*, May 21, 1873.

A similar rule has been laid down by the Madras High Court, which observed:—

"It is true that the words used in S. 473 are 'in contempt of its own authority,' and that they would narrow the prohibition to cases falling within Chapter X of the Penal Code, but S. 435 embraces also S. 228 of the Penal Code which is in Chapter XI (*offences against public justice*). Further, S. 472 is treated as a limitation of the prohibition of a Court trying offences committed in contempt of its own authority. Now the Court of Session has not exclusive jurisdiction over any offence in Chapter X of the Penal Code. It seems clear, though by most inapt words, the Legislature intended to extend the prohibition, save in the excepted cases, to all cases mentioned in Ss. 467, 468, 469. The result is that, save in these cases, a Court cannot try any offence described in Ss. 467, 468 and 469 when committed before itself"—7 Mad., xvii, App., Pro., March 27, 1873; 9 Mad. Jur., 254. This rule is applicable to abettors, *id.*, Pro., Nov. 6, 1873; 9 Mad. Jur., 58; and it also applies to contempts of authority of a Court whether acting on its Revenue or Magisterial capacity—*Ibid.*

Absconding to avoid service of summons, or other proceeding from a public servant.

172. Whoever absconds in order to avoid being served with a summons, notice, or order, proceeding from any public servant legally competent, as such public servant, to issue such summons, notice, or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hun-

dred Rupees, or with both ; or, if the summons, notice, or order is to attend in person, or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

This Section punishes non-attendance in obedience to a summons, notice, or order. The principle is that the summons, notice, or order must be addressed to, and served on, the person guilty of the disobedience. So it has been held that a person is not liable for evading the warrant of a Criminal Court issued to a Police officer for his apprehension—*Queen* v. *Omesh Chunder Ghose*, 5 W. R., Cr. R., 52 ; so that a judgment-debtor cannot be punished for keeping out of the way of a warrant—*Queen* v. *Zahoor Ali Khan*, 4 N. W. R., 97. But where a witness absconds, to avoid execution of a warrant issued under S. 353 and 354 of the Procedure Code, he is liable under this Section by the express words of S. 355—*Queen* v. *Hossein Manjee*, 9 W. R., Cr. R., 70.

Processes of proclamation and attachment cannot legally issue in cases punishable with fine only, or imprisonment not exceeding six months or both. (Ss. 148, 173, Cr. Pro. Code ; *Queen* v. *Muddon Mohun Poddar*, 3 W. R., Cr. C., 34.)

"Legally bound," see S. 43 and Note on S. 177.

Preventing service of summons or other proceeding, or preventing publication thereof.

173. Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice, or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice, or order, or intentionally prevents the lawful affixing to any place of any such summons, notice, or order, or intentionally removes any such summons, notice, or order from any place to which it is lawfully affixed, or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made, shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to five hundred Rupees, or with both; or, if the summons, notice, order, or proclamation is to attend in person, or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Refusing to sign a summons by an accused person does not constitute the offence of intentionally preventing the service of a summons on himself under this Section.

See S. 153, Cr. Pro. Code, as to mode of serving a summon.

Non-attendance in obedience to an order from a public servant.

174. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both; or if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

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Illustrations.

(*a.*) A being legally bound to appear before the Supreme Court at Calcutta in obedience to a subpœna issuing from that Court, intentionally omits to appear. A has committed the offence defined in this Section.

(*b.*) A being legally bound to appear before a Zillah Judge, as a witness, in obedience to a summons issued by that Zillah Judge, intentionally omits to appear. A has committed the offence defined in this Section.

On this Section the Commissioners remark (2nd Rep., S. 99)—"It may be asked whether letting judgment go by default in an equity suit or an action at law is a crime? We think such a question could not be asked seriously, for it is obvious that it is only disobedience to a positive order absolutely requiring the attendance of a party that is punishable, which is not the case in which it is optional with the defendant to answer or plead, subject to judgment by default, if he fail to do so.

This Section renders penal intentional non-attendance, at a certain time and place, in obedience to a summons, notice, or order issued by a person legally entitled to do so. If no summons, notice, or order issues, or if it is defective in essential particulars not duly served, the time and place not certain, or if it is issued by a person not competent to do so, a person commits no offence by disobeying it. So it has been held that where the summons did not specify the place at which attendance was required, a conviction could not be had (7 Mad. R., App., 14); so where the order did not state the day (6 Mad. R., App., 10); so proof of legal service of the summons or proclamation, &c., is necessary—*Queen* v. *Hurry Nath Chowdry*, 7 W. R., Cr. R., 58: and further where service is legal though not personal, that the summons, notice, or order came to the defendant's knowledge in time to appear, for otherwise the disobedience could not be intentional—6 Mad. R., App., 29; *Queen* v. *Ungun Lall*, N. W. R., Selected Cases, 81. As to defectiveness it is worthy of notice that a warrant issued under the Procedure Code should be sealed, should describe the person to be apprehended under it with reasonable certainty, so that there may be no difficulty in establishing his identity, and should be subscribed with the name and full official title of the Magistrate issuing it. Where a person was arrested under a warrant defective in these particulars, the arrest was set aside, and the prisoner released—*In re James Hastings*, 9 Bom. R., Cr. C., 154.

CHAP. X. S. 175.

Service of a summons, notice, or order on Sunday is legal in India—4 Mad. Jur., 347, No. 1453, 1869.

Defendant was arrested under a warrant and released on bail to appear before the Magistrate on a specified day. He did appear on that date; but the Magistrate being unable to take up the case, a verbal order was given to the defendant to appear on the following day. He omitted to do so, and was convicted under this Section. On a reference it was urged that under S. 224 of the old Code of Criminal Procedure, the Magistrate ought to have taken a written recognizance from the defendant, and that a verbal order was not binding; but the High Court held there was nothing illegal in a verbal order—5 Mad. R., App., 15. So the Bombay High Court has held that a verbal order given to a witness by a Court to attend on a particular day at a particular hour is one, the disobedience of which is punishable under this Section—*R.* v. *Guman Parthan*, Ref. 62, 1873.

A defendant under trial who forfeits his bail bond by default of appearance is also liable under this Section even though his surety has been compelled to pay the penalty in the recognizance—*Queen* v. *Taj Muddy Lahoree*, 10 W. R., Cr. R., 4.

In Bombay a Mahál Kari can issue a summons under Ss. 26 and 27, Reg. XVII, 1827, but not under S. 8, Act XI, 1843—*Reg.* v. *Narrinappa Comte*, 5 Bom. R., Cr. C., 39; *Reg.* v. *Ven Kaji Bhaskar*, 8 Bom. R., Cr. C., 19. Neither can a Chairman of Municipal Commissioners, appointed under Act XXVI of 1850 (Bombay) issue an order for attendance before him—*Reg.* v. *Purshotam Valji*—5 Bom. R., Cr. Ca., 33. Nor can a Mamlatdar cause the attendance of persons under Act V, 1862—*R.* v. *Mahomed Ismal*, Cr. Ref., 31, 1873.

In Madras Tahsildar is competent to issue a summons under Act III of 1869—6 Mad. R., App., 25.

By S. 118, Cr. Pro. Code, a Police officer in charge of a station, whilst making an investigation, can by an order in writing require the attendance of any person within his own or any adjoining station.

By S. 134 of the same Code, he can order the attendance of persons to attend at an investigation under S. 133.

Sanction to prosecute may be either direct or implied. So where a prosecution under this Section was entertained without direct sanction or complaint, it was held that as the accused was convicted by the same Magistrate whose summons was disobeyed, sanction must be implied—*Reg.* v. *Ganu bin Tatia Selar*, 5 Bom. R., Cr. C., 38. Under the present Procedure Code such a decision would be illegal. See S. 473, Cr. Pro. Code, and the note quoted in this at the head of this chapter, and the more recent case of *Muhomed Ismail* decided by the same Court.

This Section does not apply to the case of a person escaping from custody under a warrant, as this is not a notice or order directed to him—*Reg.* v. *Sardah Pathu*, 1 Bom. R., Cr. C., 38.

Where the only evidence against defendant was his own admission, that he did not attend because his master directed him not to do so, it was held that the omission was not intentional—*In re Sreenath Ghose*, 10 W. R., C. R., 33. This decision appears open to question.

"Legally bound," see S. 43 and Note on S. 177.

Omission to produce a document to a public servant by a person legally bound to produce such document.

175. Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both; or, if the document is to be

produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Illustration.

A, being legally bound to produce a document before a Zillah Court, intentionally omits to produce the same. A has committed the offence defined in this Section.

For the procedure to be adopted when an offence of the nature described in this Section is committed in the view or presence of any Court, see Ss. 435, 436, Cr. Pro. Code.

Omission to give notice or information to a public servant by a person legally bound to give notice or information.

176. Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both; or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

"Offence" includes anything punishable under a local or special law with imprisonment for six months or *upwards*—S. 40: S. 2, Act XXVII, 1870.

This Section applies only to persons upon whom a legal obligation is imposed to furnish certain information to public servants, and who intentionally fail to perform it—*Phool Chand, Petitioner*, 16 W. R., Cr. R., 35.

The charge should distinctly set forth the particular circumstances in respect of which the accused omitted to give information, and should state precisely what was his duty in the matter—*Queen* v. *Moosabroo and another*, 8 W. R., Cr. R., 37.

Upon the death or removal of any watchman the landholder or other person to whom the right of nomination to such vacancies belongs, shall send the names of the persons whom he may appoint to the Darogah having jurisdiction—Reg. XX, 1817, S. 21; *Joykissen Mookerjee and others, Petitioners*, 1 N. A. Rep., 1854, 175.

Every landholder, farmer, merchant, or other person employing paiks, chowkedars, pasbans, nizabans, burkundazes, or any other description of watchmen or guards, is to transmit a list thereof on the 1st of each Bengal, Fusily or Willeity year, specifying the names, occupations, places of residences, and allowances in land or money of the several persons entertained by them, to the Magistrate of the district. (Reg. XII, 1807, S. 21.)

In the absence of the zemindar the actual manager of the estate is the responsible person. (N. A. Const. No. 1150.)

By S. 89, Criminal Procedure Code, every person aware of the commission of any of the following offences, shall, in the absence of reasonable excuse, the onus of proving which lies on him, give information to the nearest Police officer *or* Magistrate:

121. Waging, &c., war against the Queen.
121A. Conspiring to commit certain offences against the State.
122. Collecting men, arms, &c., with intention of waging war against the Queen.
123. Concealment of the existence of a design to wage war against the Queen with intent, &c., to facilitate the same.
124. Assaulting the Governor-General, &c., with intent to compel or restrain the exercise of lawful power.
124A. Attempt to excite disaffection.
125. Waging or attempting to wage war against any Asiatic power.
126. Committing or making preparations to commit depredations on any such Asiatic power.
130. Aiding escape of State prisoner, or prisoner of war, or rescuing or harbouring, and such.
302. Murder.
303. Murder by a life convict.
304. Culpable homicide not amounting to murder.
382. Theft after preparation for causing death, &c.
392. Robbery.
393. Attempt to commit robbery.
394. Robbery with hurt.
395. Dacoity.
396. Dacoity with murder.
397. Robbery or dacoity with attempt to cause death or grievous hurt.
398. Attempt to commit robbery or dacoity armed with a deadly weapon.
399. Making preparation to commit dacoity.
402. Assembling for the commission of a dacoity.
435. Mischief by fire with intent to damage property to the amount of one hundred Rupees or upwards.
436. Mischief by fire to a house, &c.
449. House-trespass to commit an offence punishable with death.
450. House-trespass to commit an offence punishable with transportation for life.
456. Lurking house-trespass by night or house-breaking by night.
457. Ditto to commit an offence punishable with imprisonment.
458. Ditto after preparation made for causing hurt.
459. Grievous hurt while committing an offence punishable with imprisonment.
460. Being jointly concerned in committing an offence punishable with imprisonment., death or grievous hurt being caused or attempted.

By S. 90, every village headman, village watchman, owner or occupier of land, or the agent of such owner or occupier, and every native officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, is bound forthwith to communicate to the nearest Magistrate *or* to the officer in charge of the *nearest* Police station any information which he may obtain respecting

(*a*) the residence of any notorious receiver or vendor of stolen property at the village of which he is headman or watchman, or in which he owns or occupies land, or collects rent or revenue, as the case may be;

(*b*) the resort to any place within the limits of such village of any person or persons known or reasonably suspected of being a thug or robber;

(*c*) the commission or intention to commit suttee *or other non-bailable offence* at or near such village;

(*d*) the occurrence of any sudden or unnatural death.

By S. 21 of Act XXVII, 1871, village headmen and watchmen, owners and occupiers of land, are bound to give certain information under the Criminal Tribes Act.

By S. 9 of Act XIV, 1868, brothel-keepers are bound to give information of their business under the Contagious Diseases Act.

By S. 154 of this Code the owner or occupier of land on which an unlawful assembly is held or riot committed is liable to punishment, if he knows or has reason to believe that such will occur, and does not give information to the principal officer of the nearest Police office.

No private engagement between a landholder and his farmer or other lessee can absolve him from giving such information as he is bound to give under the Regulations. (N. A. Const. No. 1298.)

All village watchmen are bound to give immediate information to the thannah of the coming of robbers, vagrants, and other suspicious characters into his neighbourhood, and also of the commission of murders, robberies, burglaries, thefts, violent affrays, and other heinous offences. (Reg. XX, 1817, S. 21.)

The fact that a chowkeedar has given information of the commission of an offence which it is incumbent on a landlord to report, does not free the latter from his obligation, and he is bound to furnish the necessary information separately, either in person or by a servant. (N. A. Const. No. 1281.)

"Legally bound," see S. 43 and Note on S. 177.

Furnishing false information.

177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows, or has reason to believe, to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both; or if the information, which he is legally bound to give, respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a.*) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the District that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this Section.

(*b.*) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant, residing in a neighbouring place, and being bound, under Clause 5, Section 7, Regulation III, 1821 of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest Police station, wilfully misinforms the Police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this Section.

By S. 43, a person is legally bound to do anything the omission to do which is an offence or is prohibited, or furnishes a ground for a civil suit. He is, therefore, legally bound to perform a duty arising from a contract of service. So where certain vaccinators were charged with furnishing false returns to their official superior, and the Magistrate, finding as a fact that the returns furnished were false, acquitted them on the ground that they were not "legally bound" to furnish the information, *held* that this Section embraces every case in which a subordinate may seek to impose false information upon his

superior. The defendants were public servants, and part of their duties which they undertook was to make true returns to their official superior; consequently, to make false returns was an offence—6 Mad. R., App., 48. See also *Phool Chund Brajotanee*, 16 W. R., Cr. R., 35.

In the *Queen* v. *Luckhee Sing* (12 W. R., Cr. R., 23) the Calcutta High Court held that this Section did not apply to the case of any person who, when examined by the Police, made a false statement; but from the change made in the law by S. 118 of the Criminal Procedure Code, it is probable that these facts would now fall within the limits of this Section.

A man named Yesu gave the accused 4 annas with which to purchase for him a stamp. When the stamp-vendor asked him his name, he said "Yesu," instead of giving his own name. *Held*, looking at S. 38, Act X, 1862, that it amounted to giving false information under this Section and not to cheating by personation—*R.* v. *Ragho*, 3 Bom. R., Cr. Ca., 42.

Refusing oath when duly required to take oath by a public servant.

178. Whoever refuses to bind himself by an oath to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

For procedure to be adopted when this offence is committed in the view or presence of any Court, see Ss. 435, 436, Cr. Pro. Code.

Refusing to answer a public servant authorized to question.

179. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him, touching that subject, by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

When the offence is committed in the view or presence of *any* Court, the offender may be summarily dealt with—Cr. Pro. Code, Ss. 435, 436. And if the Court is that of a Magistrate or Sessions Judge, the offender, before being proceeded against under this Section, may be committed to custody—Cr. Pro. Code, Ss. 356, 364.

Refusing to sign statement.

180. Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.

See Cr. Pro. Code, Ss. 435, 436.

181. Whoever, being legally bound by an oath to state the truth on any subject to any public servant or other person authorized by law to administer such oath, makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

False statement on oath to public servant or person authorized to administer an oath.

On several occasions the Calcutta High Court has ruled that this Section does not apply to cases in which a person gives a false statement on oath before a public officer in a stage of a judicial proceeding, but only refers to cases in which the false statement is made in proceedings other than judicial proceedings; and that if the act charged amounts to giving false evidence in a judicial proceeding, the accused must be committed under S. 193—*Queen* v. *Bularam and another*, 7 W. R., Cr. R., 104; *Queen* v. *Shama Churn Roy*, 8 W. R., Cr. R., 27; *Queen* v. *Keeranun Sing*, *id.*, 30; *Queen* v. *Nusseeruddeen Chuzwal*, 11 W. R., Cr. R., 24.

The Bombay Court has held the same—*Reg.* v. *Dayalji Endurji*, 8 Bom. R., Cr. Ca., 21; but the Madras High Court has considered that a conviction under this Section under these circumstances is legal—4 Mad. R., App., 58. The principle on which the Calcutta and Bombay Courts have acted is that giving false evidence being an offence not within the Magistrate's jurisdiction, they could, as Courts of Revision, set aside the decision and direct a trial by a competent Court. But now giving false evidence is triable by a Magistrate, and the principle fails.

182. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public servant ought not to do or omit, if the true state of facts respecting which such information is given were known by him, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

False information, with intent to cause a public servant to use his lawful power to the injury of another person.

Illustrations.

(*a.*) A informs a Magistrate that Z, a Police officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this Section.

(*b.*) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this Section.

CHAP. X. S. 183.

The Calcutta High Court has held that this Section does not apply to the case of a person bringing a false charge. Such an offence falls under S. 211. And where the false charge is one under the second portion of S. 211, not triable by a Magistrate, the Court has set aside a conviction under this Section as illegal, and directed a trial under S. 211—*Raffee Mahomed* v. *Abbus Khan*, 8 W. R., Cr. R., 67. The Madras Court has held that there is no error in law in such a conviction. So where a person who preferred a false charge before the Police and village Magistrate of house-breaking with intent to commit theft (punishable under the latter portion of S. 211) was convicted under this Section, and the conviction was referred on the ground that the Magistrate should have committed the defendant to the Court of Sessions, the High Court held :—"There is nothing illegal in the sentence itself. The prisoner had committed the offence of which he was convicted, and the Subordinate Magistrate had jurisdiction over it. It has been held, after much consideration and after a full review of the difficulties felt elsewhere, that where the evidence discloses an offence of a graver character without the jurisdiction of the tribunal, this Court may quash the conviction and sentence for the minor offence, and direct a trial before a tribunal having jurisdiction for the graver. It has also been repeatedly held that whether it will do so or not is a question not of law, but of expediency on the facts of the particular case. The present seems to the Court a case in which such interference is not expedient."—7 Mad. R., App., 7.

The Bombay High Court seems to differ from the other Courts. It has held that a petition made by a person to the Police, falsely stating that the petitioner suspects another person of having committed an offence and praying for enquiry, does not amount to an institution of criminal proceedings against the person within the meaning of S. 211, and that the petitioner should be charged under this Section—*R.* v. *Gopal Bhikaji*, 24th April 1873. See note on S. 211.

During the course of a preliminary enquiry into a charge of murder, prisoners asserted that they had been accused at the instigation of the Police, and cross-examined the witnesses for the prosecution to support their plea. For this they were tried under this Section. Held that their defence could not be held to be "information given to a public servant" within the meaning of this Section—*Queen* v. *Daria Khan and another*, 2 N. W. R., 128.

"*Any person.*"—The Bombay High Court have interpreted this to mean "any particular person," and ruled that where a person, who is not legally bound to furnish information of an offence, falsely informs the Police that such an offence has been committed without intending to cause injury or annoyance to any particular person, he commits no offence under this Section or S. 177—*Reg.* v. *Suraji Mohan*, Cr. Review, July 1873. This decision is opposed to the meaning of "any person" in S. 425, where it is declared that the words "any person" mean "any person" in general, and not "any particular person."

A decision in a previous case is not admissible to prove the falsity of the information given by the accused persons. Evidence of the fact must be adduced in their presence—*Queen* v. *Ram Das Boistab*, 11 W. R., Cr. R., 35.

A person was accused with giving false information to a head-constable. The case was forwarded to the Magistrate by the officer in charge of the District Superintendent's office. Held this was sufficient sanction to prosecute—*Queen* v. *Grish Chunder Sirkar*, 19 W. R., Cr. R., 35.

Resistance to the taking of property by the lawful authority of a public servant.

183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing, or having reason to believe, that he is such public servant, shall be punished

with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

When the offence is one of mere resistance to process, it has been held that a Civil Court possesses no power of sending the person to the criminal authorities for trial under this Code, but should proceed under Reg. IV, 1793, S. 25, and Reg. IX, 1799—*Queen* v. *Chunderkant Chuckerbutty*, 9 W. R., Cr. R., 63. This decision has been set aside by the Full Bench Ruling in the case of the *Govt. Petitioner* v. *Bhojai Duffadar and another*, "*Englishman*" Rep., Nov. 26.

A and B, father and daughter, lived separately. The decree-creditor of A suspecting some of his property was in B's house, desired a bailiff to search it and to attach any of A's property that might be found. B would not allow the bailiff to enter, and said all the property in the house was hers, and for this was convicted for resisting. The High Court held:—

"Now in the present case there is no evidence whatever that there were any goods belonging to the defendant in the house of the accused B: and in the absence of evidence, the presumption must be in her favor that there were no such goods. As there was no such property in the house, B did not offer any resistance to the taking of any property by the lawful authority of a public servant, which is the offence of which she is convicted under S. 183 of the Indian Penal Code; nor could she be convicted under what would appear to be a mere appropriate Section, namely, S. 186, for voluntarily obstructing a public servant in the discharge of his public functions, for the bailiff would have exceeded his function, if he had done what B prevented him from doing—*Reg.* v. *Gazi Aba Dore*, 7 Bom. R., Cr. C., 83.

A objected to accompany a constable who had been directed by a written order of his superior to produce him with the property he has accused of having misappropriated, seized the constable by the arm, and also prevented him from taking the property away. Held he was guilty under this Section and S. 353—*Queen* v. *Joyah Mohun Chunder*, 14 W. R., Cr. R., 19.

Obstructing sale of property offered for sale by authority of a public servant.

184. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both.

A is charged under this Section with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words—*Illustration* (*d*), S. 439, Cr. Pro. Code.

Illegal purchase or bid for property offered for sale by authority of a public servant.

185. Whoever, at any sale of property held by the lawful authority of a public servant as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by

such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred Rupees, or with both.

By S. 11, Reg. VIII, 1819, the actual defaulter cannot purchase at a putneesale. See Note to S. 169.

This Section applies to "any sale," and is not restricted to sales of corporeal property—*Queen* v. *Reazuddeen and others*, 3 W. R., Cr. R., 33.

Obstructing public servant in discharge of his public functions.

186. Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.

A is accused of obstructing B, a public servant, in discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions—*Illustration d*, S. 441, Cr. Pro. Code.

The meaning to be attached to the word "obstruct" has been the subject of several decisions in the Bombay Courts. Thus A had a right of entry into B's house. He went there and found it open; but there were some women in it who told him that B, the owner of the house, was at his shop, and that he should obtain his permission before entering. He found B in his shop counting money, and on asking him to accompany him to the house that it might be measured, B said that he did not wish his house to be measured, refused to go, and added that he would have it measured when he had leisure. Held he was not guilty under this Section—*Reg.* v. *Bhagtidas Bhagvandas*, 5 Bom. R., Cr. Ca., 51. So it has been decided that escaping from lawful custody of a Police officer is not an offence under it—*Reg.* v. *Poshu*, 2 Bom. R., 134. So that refusing to give a cart on hire to a Government officer does not amount to obstructing a public servant in the discharge of his public functions—*Reg.* v. *Dohri Kullau*, 9 Bom. R., 165.

An officer subordinate to an officer in charge of a Police station, and deputed by the latter to make an enquiry, attempted without a search-warrant to enter a house in search of property said to have been stolen, and was obstructed. Melville, J., convicted and held that, even though the public officer was not strictly justified in searching the house without a warrant, the person obstructing could not set up the illegality of the officer's proceedings as a justification of his obstruction (S. 99), as it was not shown that the officer was acting otherwise than in good faith—*Reg.* v. *Vyhukatrár Shrenivás*, 7 Bom. R., Cr. Cs., 50. But see another case by the same Judge given in the note under S. 183. In which he held that where a public servant exceeds his duty, a person obstructing him cannot be convicted for obstructing him in the discharge of his duty. And this seems reasonable, for it may well be that a person who resists a public officer is guilty of assault, since he possesses no right of private defence, but not of the major offence, *viz.*, assaulting a public officer in the discharge of his duty.

Omission to assist public servant when bound by law to give assistance.

187. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to

give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred Rupees, or with both; and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred Rupees, or with both.

By Cl. 9, S. 21, Beng. Reg. XX, 1817, private watchmen living in towns and villages, where thannas or outposts are placed, are bound to afford their assistance to the Police.

By Cl. 10 of the same Section, on the occurrence of a gang or highway robbery, or any robbery by open violence, murder, burglary, or theft attended with wounding, or any other heinous offence* attended with a violent breach of the peace, the village watchmen are empowered to call upon the heads of villages to collect the inhabitants to oppose, seize, or pursue the criminals; and the inhabitants of the villages through which or near which the pursuit may lie are bound, on the requisition of village watchmen or other Police officer, to continue the pursuit from village to village, and afford every assistance towards apprehending the criminals and recovering the stolen property.

By S. 91, Cr. Pro. Code, every person is bound to assist a Magistrate or Police officer to prevent a breach of the peace, or suppress a riot or affray, or in taking any person whom such Magistrate or Police officer is authorized to arrest.

It would be sufficient as a defence to a prosecution under this Section to show that (1) there was no reasonable necessity to call upon the accused to render assistance, or (2) that the accused refused on account of some physical impediment or lawful excuse.

"Offence" denotes a thing punishable under a local or special law.

Disobedience to an order duly promulgated by a public servant.

188. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, be punished with simple imprison-

* Heinous offences are treason, murder, robbery, house-breaking, theft, arson, counterfeiting coin, maiming or serious wounding, where the life of the person wounded is in danger. (Beng. Reg. XX, 1817, S. 25, Cl. 8; Beng. Reg. IX, 1807, S. 3, Cl. 1.)

ment for a term which may extend to one month, or with fine which may extend to two hundred Rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration.

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this Section.

This Section should be read with S. 518 of the Criminal Procedure Code, and provides a penalty for the infraction of orders promulgated by a Magistrate under that Section. So a decree of a Civil or Revenue Court promulgated by a Judicial Officer is not an order under this Section—2 W. R., 25, Cr. L. No. 806, 1863.

The reasons which induced the passing of this Section and S. 518, Criminal Procedure Code, are given by the authors of this Code in their notes to the original Code (Note F., 30):—

"We have, to the best of our ability, framed laws against the acts which ought to be repressed at all times and places, or at times and places which it is in our power to define. But there are acts which at one time and place are perfectly innocent, and which at another time or place are proper subjects to punishment; nor is it always possible for the Legislature to say at what time or at what place such acts ought to be punishable.

Thus it may happen that a religious procession which is in itself perfectly legal, and which, while it passes through many quarters of a town, is perfectly harmless, cannot, without great risk of tumult and outrage, be suffered to turn down a particular street inhabited by persons who hold the ceremony in abhorrence, and whose passions are excited by being forced to witness it. Again there are many Hindoo rites which in Hindoo temples and religious assemblies the law tolerates, but which could not with propriety be exhibited in a place where English gentlemen and ladies are in the habit of frequenting for purposes of exercise. Again, at a particular season hydrophobia may be common among dogs at a particular place; and it may be highly advisable that all people at that place should keep their dogs strictly confined. Again there may be a particular place in a town which the people are in the habit of using as a receptacle for filth; in general this practice may do no harm, but an unhealthy season may arrive when it may be dangerous to the health of the population; and under such circumstances it is evidently desirable that no person should be allowed to add to the nuisance. It is evident that it is utterly impossible for the Legislature to mark out the route of all religious processions in India, to specify all the public walks frequented by English ladies and gentlemen, to foresee in what months and in what places hydrophobia will be common among dogs, or when a particular dunghill may become dangerous to the health of a town. It is equally evident that it would be

unjust to punish a person who cannot be proved to have acted with bad intentions for doing to-day what yesterday was a perfectly innocent act, or for doing in one street what it would be perfectly innocent to do in another street without giving him some notice.

"What we propose therefore is to empower the local authorities to forbid acts which these authorities consider as dangerous to the public tranquillity, health, safety, or convenience; and to make it an offence in a person to do anything which that person knows to be so forbidden, and which may endanger the public tranquillity, health, safety, or convenience. It will be observed that we do not give to the local authorities the power of arbitrarily making anything an offence. For, unless the Court, before which the person who disobeys the order is tried, shall be of opinion that he has done something tending to endanger the public tranquillity, health, safety, or convenience, he will be liable to no punishment. The effect of the order of the local authority will merely be to deprive the person who knowingly disobeys the order of the plea that he had no bad intentions. He will not be permitted to allege that, if he has caused harm or risk of harm, it was without his knowledge."

Order.—It has been held that under S. 518, a Magistrate, though he cannot forbid in general terms two parties to use any musical instruments in the neighbourhood of each other's houses, he may forbid them doing so for the purpose of mutual annoyance—*Ram Chunder Geer Gossain and another, petitioners*, 6 W. R., Cr. R., 40; that he can direct the rival owners of two *hauts* not to hold them on certain days, where exercising the right to do so would cause an affray—*Lalta Mitter Jeet Sing* v. *Raj Coomar Sircar*, 18 W. R., Cr. R., 22; can order priests of a temple much frequented by pilgrims to widen and heighten the doorway so as to obviate the dangers from overcrowding and improve the ventilation—*Reg.* v. *Ram Chandra Eknath etal*, 6 Bom. R, Cr. Ca., 36. But he cannot summarily order the removal of the banks of a tank in a dry river (the tank having existed for six years), because they obstructed the river in the rainy season, &c.—*In re Gholam Durbesh*, 10 W. R., Cr. R., 36; nor pass any order irrevocable in its nature as to order trees to be cut down because they impede ventilation—*Uttam Chunder Chatterjee* v. *Ram Chunder Chatterjee*, 13 W. R., Cr. R., 72; nor direct a person to enter into *recognizances* not to collect certain cesses—*Luchmiput Sing* v. *Rautmal*, 14 W. R., Cr. R., 3.

In Bombay a mamlatdar cannot direct B should not allow water from his premises to fall on premises in A's possession—*Reg.* v. *Bhau bin Vithu*, 3 Bom. R., Cr. Ca., 53; or order a person to keep a gateway open—*Reg.* v. *Khandoji bin Tanaji*, 5 Bom. R., Cr. Ca., 21; but he can order a person to abstain from disturbing the possession of parties—*Reg.* v. *Krishná Shet*, 5 Bom. R., Cr. Ca., 46.

Proof.—To ensure a conviction, it is necessary to prove that the original order was legal, that it has been served, been disobeyed, and that the disobedience has caused or is likely to cause obstruction, annoyance, injury or risk of the same to some person lawfully employed—*Queen* v. *Shabucram Bukcolee*, 2 W. R., Cr. R., 32; *Reg.* v. *Ranchod Dayal*, Cr. Ref., 140, 1873. So a conviction cannot be obtained in connection with an order under S. 518, Cr. Pro. Code, unless the order is in writing—*Pitambur Day, petitioner*, 17 W. R., Cr. R., 57.

The order should form part of the record—*Dwarick Misser, petitioner*, 18 W. R., Cr. R., 30.

Under S. 318 of the old Procedure Code, a Magistrate held A was in possession of certain lands as against B. Subsequently B got a decision in her favour from the Collector, who assumed to deal with the mehal as Government property, and was put in possession by an officer of the Collector. Held that B could not be said to have voluntarily committed an offence under this Section—*Abilakh Lall* v. *Sirnam Sing*, 15 W. R., Cr. R., 53.

If the Magistrate's finding does not show that the case comes within the latter part of the Section, only simple imprisonment can be awarded—*Reg.* v *Ratanrao*, 3 Bom. R., Cr. Ca., 32.

Threat of injury to a public servant.

189. Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Threat of injury to induce any person to refrain from applying for protection to a public servant.

190. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XI.

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

Giving false evidence.

191. Whoever being legally bound by an oath or by any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of this Section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting, is within the meaning of this Section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations.

(*a*.) A, in support of a just claim which B has against Z for one thousand Rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(*b.*) A being bound by an oath to state the truth states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(*c.*) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z, A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(*d.*) A being bound by an oath to state the truth states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named, or not.

(*e.*) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly that which is not, and which he does not believe to be a true interpretation or translation. A has given false evidence.

An oath or solemn affirmation is not a *sine quâ non* in the offence of giving false evidence. It may be committed by a person who, being bound by an express provision of law to state the truth, or to make any declaration on any subject, intentionally makes a false statement or declaration. So if a person make a false statement before a Registrar of Deeds, even though no oath or affirmation be administered to him, he is guilty of giving false evidence—2 W. R., Cr. L., 9, No. 85, 1865; so also a person making a false verification to a plaint filed in a Civil or Revenue Court, &c.—3 W. R., Cr. L., 4, No. 458, 1845. So in the case of the *Queen* v. *Nim Chand Mookerjee*, 20 W. R., Cr. R., 41, it was held: "But it is not necessary that the false evidence which is given should be the evidence in a Court of Justice. S. 191 provides that whoever is bound by any express provision of law to state the truth upon any subject, and makes any statement which is false, and which he knows or believes to be false, is said to give false evidence. Now, under S. 119, Criminal Procedure Code, a Police officer making an investigation may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and such person shall be bound to answer all questions put to him by such officer, and it would be a complete offence of giving false evidence as defined by S. 191, taking into consideration the provision of S. 119 of the Code if a false statement had been made by such a person."

It is not necessary that the false statement, &c., should be material—*Queen* v. *Parbutty Churn Sircar*, 6 W. R., Cr. R., 84; *Queen* v. *Rookneekant Mozoomdar*, 3 W. R., Cr. R., 58; *Queen* v. *Aidrus Sahib*, 1 Mad. R., 38; *Reg.* v. *Damodhar Ram Chundra Kalkarno*, 5 Bom. R., Cr. Ca., 68.

To constitute giving false evidence on a deposition or statement, it is necessary the person should be *legally* bound on oath before a competent authority. So giving false evidence cannot be assigned on a statement made on oath before any officer in a proceeding in which he has no power to administer an oath, or on a petition willingly verified, when the law does not require verification—*Queen* v. *Byhantanath Banerjee*, 5 W. R., Cr. R., 52; *Queen* v. *Kartick Chunder Halder and others*, 9 W. R., Cr. R., 58; *Queen* v. *Haran Mundle*, 10 W. R., Cr. R., 31. So where a Native Christian was convicted of giving false evidence under the form of solemn affirmation described in Act V, 1840, the conviction was set aside on the grounds that the act only applied to Hindus and Mahummadans, and the defendant not having been sworn on the Gospels was not legally bound to state the truth—*Reg.* v. *Veda Mootoo*, 4 Mad. J., 91.

And if it be shown that the officer before whom the oath was taken was acting beyond jurisdiction, a conviction for giving false evidence cannot be sustained. So where a person was convicted for a false statement made on oath in a trial, which was afterwards annulled in consequence of the sanction for the prosecution being insufficient, it was held that the conviction must be reversed—*Reg.* v. *Rajvi Valad Taju*, 8 Bom. R., Cr. C., 37. But a mere irregularity does not oust jurisdiction. So where a putative father was summoned in a case of maintenance, without any statement or oath of the woman being recorded, and he appearing did not object to the irregularity,

in any stage of a judicial proceeding, the oath or affirmation must be taken or administered by or to the accused in some stage of a judicial proceeding, and the question in the present case is whether the affirmation was so administered. I therefore asked Mr. Mayne to define a judicial proceeding. His definition I think was correct; it is nothing more or less than a step taken by the Court in the course of the administration of justice in connection with a case pending. Here the case is that the prisoner at the beginning of the day was solemnly affirmed before the presiding Judge once for all to speak the truth in all cases coming before the Court on the day for hearing; and the fair construction of this is, that, as a witness to prove the service of summonses, the prisoner affirmed to tell the truth in each and every case in which he had been concerned and respecting which the Court should on that day question him. The circumstances of the affirmation and the giving evidence having taken place at some little interval is really more a question of degree than one of principle. Suppose that ten minutes before a case of *A* v. *B*, was called on, the prisoner had been sworn to tell the truth in *A* v. *B*, surely it cannot be contended that he would not be liable to conviction under S. 193 if he gave untrue answers to questions put to him when the case was called on for hearing. On the whole, I am of opinion that, in the present case, the affirmation may be fairly and reasonably be considered as having been made in a stage of a judicial proceeding.

"With reference to the second point that no affirmation was administered to the prisoner separately and specifically in the particular suit against Kamala Bayi. I think that the affirmation made at the beginning of the day, that the prisoner would speak the truth in all cases coming on before the Court on that day, must be held to ensure as an affirmation in every case in which the prisoner was on that day questioned. I am therefore of opinion that there is no ground for quashing the conviction."

An enquiry by a Magistrate with a view of tracing the writer of an anonymous letter addressed to him, the writing of which was not an offence, is not a stage of a judicial proceeding—*Queen* v. *Bykuntnath Banerjee*, 5 W. R., Cr. R., 72.

An enquiry by the Police preliminary to proceedings before a Court is a stage of a judicial proceeding—*Queen* v. *Soondur Putnaick and Neemoo Pootoo*, 3 W. R., Cr. R., 59.

An investigation under S. 530, Cr. Pro. Code, is a judicial proceeding—*Queen* v. *Buloram and another*, 7 W. R., Cr. R., 104. So also is an order for maintenance under S. 536 of the same Code—*Reg.* v. *Thaku bin Wa*, 5 Bom. R., Cr. Ca., 81.

By S. 4, Cr. Pro. Code, "judicial proceeding" means any proceeding in the course of which evidence is or may be taken, or in which any judgment, sentence, or final order is passed on recorded evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A in any enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of lands, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Giving and fabricating false evidence are distinct offences, and should be separately charged—1 W. R., Cr. L., 9, No. 1093, 1864.

Charges for intentionally giving false evidence must set out that portion of the evidence which is alleged to be false; the effect of it is not sufficient—5 W. R., Cr. Cir. 2, No. 3, 1864; Illus. *c*, S. 441, Cr. Pro. Code; *Queen* v. *Boodhun Ahir*, 17 W. R., Cr. R., 32; that it was given intentionally—2 W. R., Cr. L.,

11, No. 67, 1863; the date on which the offence charged was committed and the Court or officer before whom the false evidence was given—*Queen* v. *Maharaja Misser*, 16 W. R., Cr. R., 47; the judicial proceeding and even the stage of the judicial proceeding in which it was made—*Queen* v. *Futteali Biswas*, 10 W. R., C. R., 37; and when false evidence is assigned on a statement or declaration of a person bound by some express provision of law to state the truth or make such declaration, the charge should contain the Section of the Act by which the accused is so bound—8 W. R., Cr. L., 13; No. 807, 1847; *id.*, 3, Cr. L., No. 644, 1867. But the Madras High Court have held that the details required by the Calcutta High Court are not necessary, and that it is sufficient if it shows that the prisoner, when being examined in a judicial proceeding, before a certain Court, swore falsely when legally bound on oath to state the truth—*Queen* v. *Aidrus Sahib*, 1 Mad. R., 38. And this view is strengthened by the form of direct and alternative charges given in the Procedure Code, Schedule III.

"That you, on or about the day of at in the course of the trial of before stated in evidence that which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence under S. 193 of the Indian Penal Code, &c."

"That you, on or about the day of at in the course of an enquiry into before stated in evidence and that you, on or about the day of at in the course of the trial of before stated in evidence one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under S. 193 of the Indian Penal Code and within the cognizance of the Court of Session."

Where intentionally giving false evidence is charged on a deposition, the charge should not contain the whole deposition; but only such as is necessary to show the false statement relied on by the prosecution, and if more statements than one in a deposition be charged, they should be entered in different heads—*Queen* v. *Soonder Mohooree*, 9 W. R., Cr. R., 25; *Queen* v. *Kalichurn Lahooree*, 9 W. R., Cr. R., 55.

If a person is charged with giving false evidence on two contradictory statements on oath, the charge should contain two heads of charge in the alternative as given above—2 W. R., Cr. L., 23, No. 354, 1868; *Queen* v. *Soonder Mohooree*, 9 W. R., Cr. R., 25.

Where several persons are chaged with intentionally giving false evidence, in the same case at the same time, or the same person with committing the offence at different times, the charge should contain a corresponding number of heads—*Queen* v. *Bhairo Misser and others*, 7 W. R., Cr. R., 5; *Queen* v. *Teojdar Ray*, 9 W. R., Cr. R., 14. And it is a serious irregularity to commit several persons together for perjury in the same case, and if so committed they should be tried separately, to prevent any doubt of their understanding that they are entitled to call one another as witnesses in their defence—3 Mad. R., App., 31; *Reg.* v. *Bhavâni Shankar Hari bhae*, 5 Bom. R., Cr. Ca., 55; 3 N. W. R., 133; 2 N. W. R., 21.

The offence of giving false evidence is an attempt to pervert the proceedings of a Court to an improper end, and as such a contempt of its authority. It should not therefore be tried by the Magistrate before whom it is alleged to have been given—*R.* v. *Nowrangbeg Dulabeg*, Bom. H. Ct., May 1873; see Ss. 471, 472, 473, Cr. Pro. Code.

By S. 468, Criminal Procedure Code, complaints of offences under Ss. 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210 211, and 228, when committed before or against a Civil or Criminal Court, shall not be entertained except with the sanction of that Court or of some Court to which it is subordinate. Such sanction may be given at any time, may be general in its terms, and need not name the accused person. Sanction under Ss. 467 or 469 is good under S. 468. See note at top of Chap X.

Sanction to prosecute should be given before the prosecution is commenced. So the Bombay Court has decided that until sanction is obtained, the tribunal by which the offence is triable has no jurisdiction, and therefore a conviction founded on evidence taken before such sanction would be bad—*R.* v. *Parshram Keshoo*, July, 1870.

Where a Magistrate before whom a witness gave false evidence, commits the witness for trial, his sanction to the prosecution must be implied—*Reg.* v. *Mahomed Khan*, 5 Bom. R., Cr. Ca., 54.

Proof.—The prosecution is bound to show that the false statement charged was made at the time and under the circumstances alleged, which is properly done by producing the proceedings in which it was made—*Queen* v. *Futteali Biswas*, 10 W. R., Cr. R., 37; that the statement was made intentionally—2 W. R., Cr. L., 11, No. 97, 1865; that it is false, and that the party making it either knew or believed it to be false or did not believe it to be true—2 N. A. Cir. 12, 1862.

The question of intention is a matter of fact to be deduced from the circumstances of each case. Thus, in the case of the *Queen* v. *Rutten Ram*, 2 W. R., Cr. R., 63, defendant pleaded that he was confused at the time he made the statement, and did not know what he was saying; but the plea was negatived, as it was shown that the statement referred to three distinct payments of money which it was improbable he could have forgotten.

If, on the trial of a person charged with perjury on two contradictory statements, the Court of Session or Jury cannot, upon the evidence, say which statement is false, but is satisfied from the evidence that the person knew that one of the statements was false when he made it, then the accused, by virtue of S. 72, is liable for intentionally giving false evidence, and a special alternative finding should be entered up accordingly—2 W. R., Cr. L., 23, No. 354, 1865; *Queen* v. *Mussamut Zameerun*, 6 W. R., Cr. R., 65; *Queen* v. *Ross*, 6 Mad. R., 342. But the mere fact that defendant has made two contradictory statements on oath is not sufficient for conviction unless the criminal intention is found to exist—*Queen* v. *Dinonath Bujjur*, 9 W. R., Cr. R., 52; and if, from the period intervening between the two statements, or the circumstances under which they were made, a corrupt intention cannot be inferred, the charge cannot be sustained. So in the case of the *Queen* v. *Nugbansee Lall*, 6 W. R., Cr. R., 89, a conviction was set aside as there was a lapse of four years between the statements, and it did not appear that the attention of the accused was called to the first statement when making the second.

By S. 134, Act I, 1872, the evidence of one witness uncorroborated is legally sufficient for a conviction of intentionally giving false evidence.

Before the passing of Act I, 1872, it was ruled that, in a trial for giving false evidence on oath, the administration of oath must be proved—*Queen* v. *Kallychurn Gangooly*, 6 W. R., Cr. R., 9; that a judge cannot take judicial notice, that a deposition is signed in his own handwriting or in that of a Judge of another Court, and the handwriting must be proved by evidence—*Queen* v. *Dinonath Bujjur*, 9 W. R., Cr. R., 52; *Queen* v. *Futteali Biswas*, 10 W. R., Cr. R., 37. But now by S. 80 of that Act, whenever a document is produced before any Court purporting to be a record or memorandum of the evidence or of any part of the evidence given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person taken in accordance with law and purporting to be signed by any Judge or Magistrate or by any officer aforesaid, the Court shall presume that the document is genuine; that any statement as to the circumstances under which it was taken purporting to be made by the person signing it are true, and that such evidence, statement or confession was duly taken.

The original deposition must be filed with the record—*Queen* v. *Kallychurn Gangooly*, 6 W. R., Cr. R., 92, and that when the deposition is accompanied by the memorandum prescribed in S. 199 of the Cr. Pro. Code, signed by the

Magistrate, and the signature is proved, then it is absolute proof of what the person charged with giving false evidence stated—8 W. R., Cr. L., 16, No. 866, 1867.

When a person is charged with intentionally giving false evidence on contradictory statements in two depositions, one deposition is admissible to show the falseness of the other—*Queen* v. *Mussamut Zameerun*, 6 W. R., Cr. R., 16.

"*Irregularity*."—Any serious irregularity in recording a deposition is sufficient to render it inadmissible. Thus, it was held under the former Procedure Code that, if taken under the provisions of Chap. XIV, Cr. Pro. Code, it was inadmissible if it had not been read over to the witness, or if there was no memorandum attached; or was unsigned by the Magistrate; or it did not show that it was recorded before a person possessing jurisdiction—*Queen* v. *Issur Raout and others*, 8 W. R., Cr. R., 63; *Government* v. *Mungeir*, N. A. R., 1854, 217; *Government* v. *Rughoonauth Quiry*, *id.*, 328; *Government* v. *Raj Kissen Dutt and others*, 1 N. A. R., 1853, 561. So the record of proceedings of a Mofussil Small Cause Court is not admissible in evidence unless authenticated by the Judge—*Queen* v. *Shib Chunder Dutt*, 6 Beng. R., 730; but it is otherwise if the Court is at the Presidency—*Queen* v. *Nakur Sirkar*, 6 Beng. R., 730. But the failure of a Civil Court Judge to make a memorandum of the evidence of the accused, when examined before him, does not vitiate the deposition itself—*Bahary Lall Bose and others*, 9 W. R., Cr. R., 69; nor does the fact that the deposition was recorded in a private house at night exclude it—*Queen* v. *Syud Hossain Ali Chowdry*, 8 W. R., Cr. R., 74. See note on S. 94.

"*Oral Evidence*."—By S. 121, Act I, 1872, no Judge or Magistrate can be compelled to answer any question as to his own conduct in Court, or about anything which came to his knowledge, unless with the sanction of some Court to which he is subordinate. So he cannot be compelled to say whether a deposition was properly taken or not.

Oral evidence does not seem admissible to prove the contents of a deposition recorded under the Cr. Pro. Code when the written document is inadmissible from any defect in receiving it. Thus in *Reg.* v. *Bai Ratun*, Bom. H. Ct., Sept. 1873, it was held that the confession of an accused person, taken by a Magistrate under S. 122, Cr. Pro. Code, is not admissible unless signed by the accused: that the final clause of S. 346 of the same Code is inapplicable to confessions under S. 122, and consequently when such a confession is inadmissible, oral evidence to prove that such a confession was made, or the terms of it is precluded by S. 91, Act I, 1872. This ruling seems to set aside a decision passed before the Evidence Act by the High Court, that a witness may be convicted for giving false evidence on a statement made during his examination, but not recorded in the deposition, and oral evidence of the same is admissible—9 W. R., Cr. L., 8, No. 531, 1868; 8 W. R., Cr. L., 16, No. 866, 1867. Whether oral evidence can be received to show on the part of the accused that, after deposing, he added statements explanatory of the evidence he had given, has not been formally determined by the High Court—8 W. R., Cr. L., 16, No. 866, 1867. Such evidence is admissible under English law, and apparently on the same principle the Nizamut Adawlut decided that perjury cannot be assigned on a deposition retracted before attestation by the Magistrate—*Government* v. *Haldhur Modlee*, 2 N. A. R., 70. And this is doubtless the effect of the Evidence Act. By S. 30 of that Act, combined with S. 4, it is clear that though a deposition properly taken is presumed to be genuine, the presumption can be rebutted.

In a trial for perjury the whole deposition must be put in, and if perjury be assigned on a portion of a statement which is explained by another portion, the two statements must be taken together. So in trying a case with the aid of a jury, which is based on two contradictory statements given on oath, the whole depositions should be read over to the jury—*Queen* v. *Kallychurn Gangooly*, 8 W. R., Cr. R., 92.

CHAP. XI. S. 194.

The making of any number of false statements in the same deposition is one aggregate offence of giving false evidence—6 Mad. R., App., 27.

It is no defence to urge that prisoner, by answering truly, would have criminated himself. By S. 132 of the Evidence Act, an examination of a witness may be used for the purpose of punishing for giving false evidence. So where a person was acquitted on the ground that the statement tended to *criminate* himself, *held* the acquittal was illegal—3 Mad. R., App., 30.

Subornation of perjury is treated under the Code as abetment. Abetment is presumed if a party produces a person to support a false defence or as a witness to a deed, a person who has falsely personated the real witness—*Government* v. *Ramdial*, 2 N. A. R., 361; *Government* v. *Muteeoola and others*, N. A. R., 1837, 67. But the presumption fails if the party can show that, though present in Court when the evidence was given, the case was not conducted by him but by his agent; or the false statement was not intimately connected with the point at issue—*Government* v. *Ramdyal*, N. A. R., 1829, 281; *Government* v. *Rajoo Mundul and others*, 2 N. A. R., 1852, 421.

Prisoner asked a witness to suppress certain facts in giving his evidence against the prisoner before a Magistrate on a charge of defamation. Held he was guilty of abetment of false evidence in a judicial proceeding—*Audy Chetty, prisoner*, 1 Mad. R., 438.

If, during the trial of a case under Chap. XVI, Cr. Pro. Code, it may appear to the Magistrate that a witness is giving false evidence, so that criminal proceedings may be necessary, he should record the evidence in the manner described in Chap. XVII of the same Code—2 W. R., 249, Cr. Cir. No. 4, 1864.

By S. 80, Act VIII, 1871, whoever intentionally makes a false statement before a Registrar of Deeds whether on oath or not, or whether it be recorded or not, is liable to seven years' imprisonment, and fine.

Giving or fabricating false evidence with intent to procure conviction of a capital offence.

If innocent person be thereby convicted and executed.

194. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by this Code or the law of England (S. 7, Act XXVII, 1870), shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

Sanction to prosecute is necessary—Ss. 468, 470, Cr. Pro. Code.

A, with intent to injure B, brings a false charge against him of having committed an offence. On the trial, A gives false evidence against B. A may be convicted and punished separately under Ss. 194, 195, and 211 of the Code—Illus. *d*, 454, Cr. Pro. Code.

In the trial of a prisoner for murder, a witness stated on oath before the Sessions Court, that another had committed the murder, whereas before the Magistrate he had stated as was the fact, that prisoner had committed it. Held, he was only guilty under S. 193, and not under this Section, as the witness did not know that he would cause a conviction for murder—*Queen* v. *Harydyal*, 3 Ben. R., App. Crim., 35. So where a prisoner was convicted under S. 195 for burning his house with the object of getting another convicted of

doing so; and the act was done in a most open manner and no complaint was made by the prisoner,—*held*, the conviction could not be upheld as there was no evidence of *intention* to convict—*Queen* v. *Shib Dyal*, 5 N. W. R., 189.

"Whipping"—see Act VI, 1864, Ss. 4, 7.

"Offence"—includes anything punishable under local and special laws.

Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment.

195. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which by this Code or the law of England (S. 7, Act XXVII, 1870) is not capital, but punishable with transportation for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Illustration.

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is transportation for life, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to such transportation or imprisonment with or without fine.

See Note under last Section, which apply *mutatis mutandis* to this.

Using evidence known to be false.

196. Whoever corruptly uses or attempts to use as true or genuine evidence, any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

As this Section does not specify accurately the amount of punishment, the charge should contain the words "punishable under Ss. 193 and 196 of the Indian Penal Code," &c.—2 W. R., Cr. L., 9, No. 94, 1865.

Using and attempting to use false evidence are distinct offences, and should be charged separately.—*Id.*

Sanction under S. 468, Cr. Pro. Code, is necessary to prosecute under this Section. See note at top of Chap. X.

To ensure a conviction of attempting to use false documentary evidence, it must be proved that the accused knew of the forgery, and intended to use the false evidence for the purpose of affecting the decision of a Court on the point at issue when the evidence was tendered. So where a person produced an account book, of which one of the leaves had evidently been fraudulently replaced by another, a conviction was set aside, as there was no evidence to show the original leaf contained any entry referring to the point in connection with which the book was produced—*Queen* v. *Muddoosoodun Shaw*, 7. W. R., Cr. R., 23.

Using false evidence in a stage of a judicial proceeding must be proved by producing the record of the proceedings in which it was used. (MSS. Case, Jessore, 1868.)

By S. 80, Act VIII, 1871, intentionally delivering to a Registering Officer a false copy or translation of a document, or a false copy of a map or plan, is punishable with seven years' imprisonment.

Issuing or signing a false certificate.

197. Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or

believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

Sanction to prosecute is not necessary under S. 448, Cr. Pro. Code. See note at top of Chap X.

A certificate is a testimony given in writing to declare or verify the truth of anything. (Wharton, L. Lex., 167.)

If a peon of a Revenue Court makes a false return to service of summons, and thus intentionally causes the Nazir to make an endorsement as required by S. 46, Act X, 1859, which is false in a material point, he would, it appears, be guilty of abetting an offence under this Section—*Queen* v. *Hissamuddeen*, 3 W. R., Cr. R., 37.

Using as a true certificate one known to be false in a material point.

198. Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Sanction to prosecute unnecessary under S. 448, Cr. Pro. Code, &c.

False statement made in any declaration which is by law receivable as evidence.

199. Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

The charge should set forth that the false declaration was touching a point *material* to the subject for which it was made, as, in the absence of these words, the act would not fall within this Section—3 W. R., Cr. L., 17, No. 687, 1865.

Sanction to prosecute is necessary under S. 448, Cr. Pro. Code.

In the case of *Reg.* v. *Vedamootoo* (4 Mad. J., 71), the Madras High Court ruled that this Section does not apply to declarations made by a witness in a deposition. The decision is as follows:—

"In regard to the second charge, the question is whether the false statement can be held to be a statement made in a declaration within the meaning of the Section (199) on which the charge is framed. We are of opinion that it was intended by the Section to make the penalty attached to the offence of giving false evidence, applicable to declarations which though not compellable have, on being made, the same effect as the compulsory declaration referred to in Ss. 51 and 191, and that declaration in the Section means any statement of fact in the form simply of a declaration which, for the purpose of proof of the fact declared to, has by itself all the legal force of evidence given on oath or the solemn affirmation substituted for an oath,—in short a declaration receivable in lieu of personal testimony. Here the statement is a part of the prisoner's deposition as a witness, and as such not having been made under the sanction of oath, it is not admissible as legal evidence of the fact stated. Further the provision in the Section making it essential to prove the materiality of the false statement, which is not necessary under S. 193—the *Queen* v. *Aidrus Sahib*, 1 Mad. R., 38—and declaring the offence

punishable in the same manner as if the offender 'giving false evidence,' shows clearly we think that the Section has no reference to the examination of a witness in a judicial proceeding."

Using as true any such declaration known to be false.

200. Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of Sections 199 and 200.

Sanction to prosecute is necessary under S. 448, Cr. Pro. Code. See note at top of Chap. X.

Causing disappearance of evidence of an offence committed or giving false information touching it to screen the offender.

201. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or both.

If a capital offence.

If punishable with transportation.

If punishable with less than ten years' imprisonment.

Illustration.

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

Charge.—That he, on or about ——, at ——, believing, or having reason to believe, that an offence punishable with death (or "transportation for life," &c.) had been committed, caused evidence of the commission of the offence to disappear (or gave evidence which he knew or believed to be false, &c.) with intention of screening the offender from legal punishment, and that he has, &c.—8 W. R., Cr. L., 7, No. 734, 1867.

CHAP. XI. S. 202.

No sanction to prosecute is necessary. See note at top of Chap. X.

This Section does not refer to cases where a person causes the disappearance of evidence of an offence committed by himself, nor can a person be convicted for abetting such—*Reg.* v. *Kashinath Dinker*, 8 Bom. R., Cr. Ca., 126; but only to cases in which a person causes the disappearance of evidence of an offence committed by *another*—5 W. R., Cr. L., 5, No. 242, 1866; *Queen* v. *Ramsponder Shootar*, 7 W. R., Cr. R., 52.

"*Knowledge or reason to believe*."—In the case of the *Queen* v. *Subbramanya Pillil* (3 Mad. R., 251), defendant was charged with giving false information regarding an offence with the intention of screening the offender, and the High Court held that the proper order of proof on the part of the prosecution was to prove (1) that A was murdered; (2) that the defendant gave information respecting this offence; (3) that such information was false and known by him to be so; (4) that he then knew of the commission of the murder, and (5) that his intention was to screen the murder. It must, however, be borne in mind that a person is liable if he makes a false statement if he has reason to believe that an offence has been committed, without actual knowledge, and the liability exists even though he may have been mistaken in his belief. So it has been held that it is not necessary for conviction under this Section to prove that an offence has been committed. The point to be determined is, whether the accused, at the time of causing the evidence to disappear, knew or had reason to believe that an offence had been committed, and if so, he would be liable, although he might have been mistaken in his belief—2 W. R., Cr. L., 1, No. 11, 1865; *Queen* v. *Hurdut Surma*, 8 W. R., Cr. R., 68. Evidence of the conviction of the original parties is inadmissible in a case under this Section.—*Id.*

The question of the knowledge or belief possessed by the accused is a matter of fact to be determined on the circumstances of each case, and no general rule can be laid down. It would, however, appear from the case of the *Queen* v. *Pelkoo Nushyo and others*, 2 W. R., Cr. R., 43, that very strong evidence is necessary to support a conviction if the act, evidence of which was made away with, does not amount to an offence. In that case Pelkoo killed a burglar at night, who was advancing to attack him, with a blow of a stick, and *then* he and the persons accused removed the dead body and put it in a cane-brake about a mile from the place. The High Court considered Pelkoo had not exceeded his right of private defence, and stated with regard to the other prisoners: "We observe that Section (201) contemplates a knowledge or reasonable belief that an offence has been committed, and an intention to screen the offender. Now, as we have held, the prisoner Pelkoo was guilty of no offence, it may be presumed the other prisoners could not have any knowledge or belief that an offence had been committed, nor any intentions of screening an offender."

"*Intention*."—The act committed must have been done with the *intention* of screening the offender, mere knowledge that it is likely to do so is not sufficient. So where prisoners finding the dead body of a woman who had evidently been murdered removed it with no other intention than to prevent blame attaching to their village. Held, a conviction under this Section could not be sustained as the intention was not to screen the offender—*Queen* v. *Toolshee Rai*, 5 N. W. R., 186.

A person can be convicted for causing the disappearance of evidence of an offence, although no person has been tried or convicted of committing such offence—*Queen* v. *Muddun Mohun Bose and others*, 7 W. R., Cr. R., 22.

"Offence" includes anything punishable under a local or special law with ten months' imprisonment.

Intentional omission to give information of an offence by a person bound to inform.

202. Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence,

which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Sanction to prosecute is not necessary, &c.

Although the wording of this Section is very similar to that of Ss. 204 and 203, it has been held that a person cannot be convicted for omitting to give information of any act done, unless such act amounts to an offence—*Queen* v. *Ram Rachen Sing and others*, 4 W. R., Cr. R., 29; but in a subsequent case it was held that reason to believe that an offence was committed is sufficient, and this is clearly the law—*Woody Chund Mookapudya*, 18 W. R., Cr. R., 31. The omission must be intentional—*Id.* See note on Ss. 176, 217.

But in a later case one Judge of the High Court held without referring to the previous decision that there must be proof that an offence has been committed—*Queen* v. *Joy Narain Patro*, 20 W. R., Cr. R., 66.

Quære.—If giving information does not mean "volunteering information"—*Id.*

Giving false information respecting an offence committed.

203. Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

It is not necessary that the accused should know how the offence was committed. It is sufficient, if knowing, or having reason to believe, that an offence has been committed, he should give the information respecting it which he knew or had reason to believe was false—9 W. R., Cr. L., 2, No. 135, 1868. So where a body was found with wounds in the neck and throat, which indicated the deceased had met with foul play, and a chowkeedar having inspected the body informed at the thanna that the deceased had died from cholera, and there was nothing suspicious in the matter, he was convicted under this Section—*Queen* v. *Cheetour Chowkeedar*, 1 W. R., Cr. R., 18.

The intention with which the false statement is made is immaterial.—*Id.*

Destruction of document to prevent its production as evidence.

204. Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

False personation for the purpose of any act or proceeding in a suit.

205. Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued, or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Charge.—That he, on or about ——, at ——, falsely personated A. B., and in such assumed character made a statement, *viz.*, (here set forth the statement), and that he has thereby, &c.—8 W. R., Cr. L., 18, No. 908, 1867; 5 W. R., Cr. L., 6, No. 250, 1866.

Sanction to prosecute under this Section is necessary. See note at top of Chap. X.

The accused must have assumed the name and character of the person he is charged with having personated; so filing a petition by a person in the name of another without mentioning his own name until asked is not sufficient—*Queen* v. *Narain Acharj*, 8 W. R., Cr. R., 80.

A criminal prosecution is ended after judgment is delivered—8 W. R., Cr. L., 15, No. 863, 1867; and a suit after final decree—*Suroop Chunder Patro* v. *Jadoo Moytee*, 5 W. R., S. C. C. R., 7. But see S. 4, Cr. Pro. Code, as to meaning of "trial."

A prosecution under Act III, 1852, is a criminal prosecution within the meaning of this Section—*R.* v. *Gunga*, Bom. H. Ct., Dec. 1871.

The Madras Court has held that fraudulent gain or benefit is not an essential element of the offence. So where A personated B at a trial with B's *consent*, and in order to save him the trouble of appearing in person, it was held that A was guilty of an offence under this Section, and B of abetment—*Ex parte Suppakon*, 1 Mad. R., 450. But see to the contrary—*The Queen* v. *Luttee Bewa*, 2 Beng. R., 26.

The offence may be committed even where the person personated is purely imaginary—*Queen* v. *Bhitto Kuhar*, Ind. Jur., 123; but the High Court at Madras has decided that a mere *alias* or *incog* is not an offence, it must be the assumption of the name of some other known individual—3 Mad. J., 146; 4 Mad. R., 19; *Radue Ravultan, appellant.* They held this view appears more sound and consonant to English decisions. See note on S. 470.

By S. 93, Act XX, 1866, false personation before a Registering Officer is punishable with the same punishment.

Fraudulent removal or concealment of property to prevent its seizure as a forfeiture or in execution of a decree.

206. Whoever fraudulently removes, conceals, transfers, or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a Civil suit,

shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraud is essential. The publicity of the alienation is admissible to rebut the presumption of fraud—*Balmokoond* v. *Brojo basi*, 18 W. R., Cr. R., 45.
Sanction to prosecute is necessary—S. 468, Cr. Pro. Code.

Fraudulent claim to property to prevent its seizure as a forfeiture or in execution of a decree.

207. Whoever fraudulently accepts, receives, or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice, or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a Civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Sanction to prosecute is necessary—S. 468, Cr. Pro. Code.

Fraudulently suffering a decree for a sum not due.

208. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person, or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration.

A institutes a suit against Z. Z knowing that A is likely to obtain a decree against him, fraudulently suffers A judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this Section.

Sanction to prosecute is necessary—S. 468, Cr. Pro. Code.

False claim in a Court of Justice.

209. Whoever, fraudulently or dishonestly or with intent to injure or annoy any person, makes in a Court of Justice any claim, which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Sanction to prosecute is necessary—S. 468, Cr. Pro. Code.

Fraudulently obtaining a decree for a sum not due.

210. Whoever fraudulently obtains a decree or order against any person for a sum not due or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

When a person applies for execution of a decree which has already been executed, he does not make a false claim, and his offence falls under this Section, and not 209—*Queen* v. *Begum Mahtoon*, 12 W. R., Cr. R., 37.

Sanction to prosecute is necessary—S. 468, Cr. Pro. Code.

False charge of offence made with intent to injure.

211. Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sanction to prosecute under this Section is necessary—S. 468, Cr. Pro. Code.

"Offence" includes anything punishable under a local or special law—Act XXVII, 1870, S. 2.

There is a wide difference between the procedure necessary when a person is charged with making a false complaint and with making a frivolous and vexatious charge under S. 209, Cr. Pro. Code. Under the latter Section no regular

trial, no formal charge is necessary, but a regular trial is required to render a person liable for a false complaint—1 W. R., 169, Cir. No. 19, 1863.

"*Charge.*"—The charge should give the offence which was falsely complained of, the name of the persons to whom it was made, and of the person falsely accused, and should declare that the accused knew there was no just or lawful ground for such charge—3 W. R., Cr. L., 4, No. 458, 1868; 2 W. R., Cr. L., 7, No. 48, 1865; *Id.*, 2, No. 13, 1865; 8 W. R., Cr. L., 8, No. 744, 1867; *Queen* v. *Chidda*, 3 N. W. R., 327. The High Court of Calcutta has held that charge which the prosecutor intended to bring, and not that which is legally framed on his evidence, must form the basis of any prosecution brought against him for making a false charge—*Queen* v. *Melon Meeah*, 3 Cr. Rep., Cr. R., 9. But it is difficult to know what a person intends to charge if be not the legal effect of his words.

"*Sanction.*"—Charges under this Section, arising out of proceedings before any Civil or Criminal Court, cannot be entertained without proper sanction, as laid down in S. 468, Cr. Pro. Code; but it may be couched in very general terms and given at any time before complaint. It has been held that as a Magistrate may dismiss a complaint on a Police report, sanction given after such is valid; but that the Magistrate of the district cannot sanction a prosecution for false complaint so long as the original case is pending before another Magistrate in his district—*Gour Mohun Sing, petitioner*, 8 Beng. R., App., 11. And where a Magistrate dismissed a case without hearing the witnesses tendered by complainant, and sanctioned a prosecution against him under this Section, it was held that he should have heard all the witnesses before he could do so—*Queen* v. *Heera Lall Ghose*, 13 W. R., Cr. R., 37.

But it is not necessary that the complaint should have been made before a Magistrate in the first instance. In the case of the *Queen* v. *Sulbana Gaundhan and others*, 1 Mad. R., 30, it was held as follows:—

"To constitute the offence of preferring a false charge contemplated in S. 211 of the Penal Code, it is not necessary that the charge be before a Magistrate. It is enough if it appear, as it does in the present case, that the charge was deliberately made before an officer of Police with a view to its being brought before a Magistrate. Of course a mere random conversation or remark would not amount to a charge. As to the other point it is said that it must appear the charge was fully heard and dismissed. That is not necessary. It is enough in a case like the present if the charge is not still pending. An indictment for falsely charging could not be sustained if the accusation were entertained and still remained under proper legal enquiry. Here the facts that the Police refused to act upon the charge, and that no further step was taken, are enough to bring the case within S. 211." So the Calcutta High Court has held that this Section, and not S. 182, refers to the case of a person accusing another before the Police with causing the death of his child—*Ruffee Mahomed* v. *Abbas Khan*, 8 W. R., Cr. R., 67; so that if a person prefers a complaint before the Police, who they are competent to deal with, and thereby sets them in motion, he institutes a "criminal proceeding"—4 W. R., Cr. L., 11, No. 1155, 1868; *Queen* v. *Bonomally Sohai*, 5 W. R., Cr. R., 30.

Where a person who is interested in a matter or has a certain official responsibility says to a Police officer:—"A tells me that X has committed a certain offence, and B and C confirm the statement, and I accordingly suspect X," and follows up that statement by an application to have X's house searched, he prefers a charge against X—*Queen* v. *Hunooman Lall*, 19 W. R., Cr. R., 5.

So if a subordinate Police officer falsely reported that a person has committed an offence, and afterwards acting on orders passed by his superiors on his report lays a false charge against such person, he is guilty; and the plea that as he acted under orders he is not responsible, cannot avail—*Queen* v. *Rhedoy Nath Biswas*, 2 W. R., Cr. R., 45; *Queen* v. *Nobokisto Ghose*, 8 W. R., Cr. R., 87.

"*Proof.*"—The prosecution must prove that (1) the accused intentionally to cause injury to any person (2) instituted a false charge of an offence or a criminal proceeding against that person (3) knowing there was no just or lawful ground for such proceeding—*Queen* v. *Nobokisto Ghose*, 8 W. R., Cr. R., 87.

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It is not absolutely necessary to show that the criminal proceeding was *false*, it is sufficient if it be shown that it was made without just and lawful grounds—*Vengama Naikar* v. *Raghava Chary*, 2 Bom. R., 291; *Queen* v. *Nobokisto Ghose*, 8 W. R, Cr. R., 87; but where the prosecution is based on a false charge, it must be shown that the act charged was an offence. So it was held in 1863 that as the refusal to give a stamped receipt for money paid was not an offence, making a false charge of such was not punishable under this Section—*Reg.* v. *Gapaú Rom Kusaji*, Bom. R., 192. But now such an act is punishable owing to the alteration of the word "offence" and S. 27, Act XVIII, 1869.

If the charge has not been preferred in bad faith, but only carelessly or rashly, he is not punishable, although he may have acted rashly on information which would not be sufficient to satisfy a reasonable man. His knowledge must be inferred from the evidence given as to the circumstances under which the complaint was made, and if it be proved that the charge was made without reasonable or probable cause, a fair presumption of guilty knowledge arises—*Queen* v. *Muthoorapershad Pandey*, 2 W. R., Cr. R., 10; *Queen* v. *Prankissen Bid*, 6 W. R., Cr. R., 15; 1 W. R., 169, Cr. Cir. No. 19, 1863. On this the remarks of Holloway (C.J.) in *Goday Narain* v. *Aukotram Venkata Narsing*, 6 Mad. R., 85, where the complaint was admitted false, are worthy of attention:—

"The charge was false, was it also malicious? This depends on the question of the absence of reasonable and probable cause, and in the case of the absence upon the cogency of the inference derivable from it. *Lister* v. *Prettyman*, 4 L. R., H. L., 521, is an example of the curious state of English law on the matter. The test which has received the most approbation is partly abstract and partly concrete. Was it reasonable and probable cause for any discreet man? Was it so to the maker of the charge?"

"*Defence.*"—In answer the accused can point out the information on which he acted, and show that though the grounds on which the charge were based are untrue, yet he did not know this; and before convicting, the Judge ought not only be satisfied that the facts alleged as the ground for making the charge are in themselves untrue and insufficient, but also that they were known to be such to the accused when the charge was made—*Reg.* v. *Navalmi valad Umedmal*, 3 Bom. R., Cr. R., 16.

It would seem that a conviction in the original case would be conclusive proof of reasonable and probable cause. In the case of *Svami Nayudu* v. *Subramania Mudali*, 2 Mad. R., 158. Holloway (J.) held: "The allegation that, through the representation of the defendant, plaintiff was fined Rs. 10, seems intended loosely to suggest a case of malicious prosecution. The law on the subject is perfectly clear. The prosecution must be malicious and without reasonable and probable cause. No man, even if actuated by the greatest ill-will, can be liable in an action if there was reasonable and probable cause for the prosecution, and still less where, as in this case, when the conviction of the offender is conclusive evidence that there was such cause." In another case—*Parimi Bussir* v. *Bellamkonda Chiranna Venkayya*, 3 Mad. R., 239—the effect of a conviction subsequently reversed was reviewed. In that case plaintiffs were convicted by the Joint Magistrate for offences under Ss. 403, 461, 506, but released by the Court of Session. They then sued complainant, and their case was dismissed. The Court held—"We do not know of any instance of a suit of this kind being successfully maintained after a conviction of the plaintiffs by the sentence of one competent tribunal."

In the case of *Reynolds* v. *Kennedy*, 1 Wilson, 232, the attempt was made; but it failed. That was a case of a prosecution in Ireland under the revenue laws, and the plaintiff was found guilty, and his goods condemned by the Sub-Commissioners; but their judgment was reversed by the Commissioners on appeal. The plaintiff brought his suit in the Irish Court of K. B., and the jury found a verdict for the plaintiff for £371; but the Irish Court arrested the judgment on the ground that the judgment of the Sub-Commissioners (which was stated in the declaration) showed that there was foundation for the information and prosecution And on appeal to the Court of K. B. in England

the judgment was confirmed. Lee (C.J.) saying at the end of his judgment: "Upon the whole we think the plaintiff himself has shown by his declaration that the prosecution was not malicious, because the Sub-Commissioners gave judgment for the defendant, and therefore we cannot infer any malice in him." This seems to us very good sense, and to be as applicable to a suit in the mofussil as anywhere else. We do not mean that in every case the judgment of one competent tribunal against the plaintiff should be considered a conclusive answer to the suit; for it is manifest that there may be circumstances which would necessarily deprive it of any effect, as if it should be shown that the defendant, when instituting the prosecution, had information favorable to the plaintiff which he kept back from the Court; but we do think that, in the absence of any special circumstances to rebut it, such a judgment affords very strong evidence of reasonable and probable cause; and in the case now before us we find no circumstances sufficient to destroy its effect."

Magistrates are debarred to give evidence of matters which have come before them in the course of a preliminary enquiry into a criminal charge, and their evidence is not admissible in a charge of false complaint. (S. 121, Act I, 1872).

When a person is convicted of a false charge, the nature of the false charge should be stated in the finding and entered in the calendar—*R.* v. *Arjoon*, 1 Bom. R., 87.

The record of the original case is not admissible to prove the falseness of the case in a prosecution under this Section—*Queen* v. *Ramdass Boistub*, 11 W. R., Cr. R., 35.

Giving evidence in support of a false charge does not necessarily amount to abetment of it—*Queen* v. *Panu Pundah*, 18 W. R., Cr. R., 28; 8 Beng. R., App., 16.

Making a false charge and giving false evidence in a stage of a judicial proceeding in support of it are distinct offences, and may be separately punished—*Queen* v. *Abdool Azeez*, 7 W. R., Cr. R., 59. See Illustration (*d*), S. 454, Cr. Pro. Code.

And see Note under S. 194.

Harbouring an offender.

212. Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment, shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment which may extend to one year and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

If a capital offence.

If punishable with transportation for life, or with imprisonment.

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

Illustration.

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here as B is liable to transportation for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

"Offence" includes anything punishable with imprisonment for six months or upwards under any local or special law—Act XXVII, 1870, S. 2.

The mere finding of an offender in a person's house without proof, that the person knew or had reason to believe that he had committed an offence, is not sufficient—*Government* v. *Gojendronath Mullick*, N. A. R., 1854, 272.

Taking gift, &c., to screen an offender from punishment.

213. Whoever accepts, or attempts to obtain or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

If a capital offence.

If punishable with transportation for life or with imprisonment.

"Offence" A thing punishable under the Code or any local or special law (S. 40)—Act XXVII, 1870, S. 2.

Offering gift or restoration of property in consideration of screening offender.

214. Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or to restore or cause the restoration of any property to any person, in consideration of that person's concealing an offence or of his screening any

person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death, be punished. with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

If a capital offence.

If punishable with transportation for life or with imprisonment.

Exception.—The provisions of Sections 213 and 214 do not extend to any case in which the offence consists only of an act irrespective of the intention of the offender, and for which act the person injured may bring a civil action.

Illustrations.

(*a.*) A assaults B with intent to commit murder. Here, as the offence does not consist of the assault only, irrespective of the intention to commit murder, it does not fall within the exception, and cannot therefore be compounded.

(*b.*) A assaults B. Here, as the offence consists simply of the act irrespective of the intention of the offender, and as B may have a civil action for the assault, it is within the exception, and may be compounded.

(*c.*) A commits the offence of bigamy. Here, as the offence is not the subject of a civil action, it cannot be compounded.

(*d.*) B commits the offence of adultery with a married woman. The offence may be compounded.

Hurt may be compounded (*R.* v. *Jetha Bhala*, 10 Bom. R., 68).

As a rule, compounding an offence is itself an offence under this or the previous Section; and exception is made in favor of such offences only as consist of acts which are penal irrespective of the intention of the offender, and for which act the party aggrieved can bring a civil action. The Section is not consistent with the illustration which declare that it is an offence to compound a case of house-trespass, but none to compound adultery or assault.

This Section states that compounding certain offences is not an offence. It does not refer to, and has nothing to do with, the power of the Criminal Court to allow criminal charges to be withdrawn during trial, which is a matter of procedure, and is provided for in Ss.188, 210 of the Cr. Pro. Code—9 W. R. Cr. L., 2, No. 122, 1868; *Id.*, 4, No. 1339, 1867. But see the case of the *Queen* v. *G. R. Smith*, 4 W. R., Cr. R., 31, and note to S. 497.

It would appear from the Section and Illustrations that, unless an offence is committed, the person compounding is not liable. The word "offence" includes acts punishable under a local or special law (S. 40, and Act XXVII, 1870, S. 2).

Taking gift to help to recover stolen property, &c.

215. Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any moveable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Harbouring an offender who has escaped from custody, or whose apprehension has been ordered.

216. Whenever any person convicted of or charged with an offence being in lawful custody for that offence, escapes from such custody, or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say: if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; if the offence is punishable with transportation for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine; and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

If a capital offence.

If punishable with transportation for life or with imprisonment.

Exception.—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

"Offence" includes anything punishable with imprisonment for six months or upwards under any local or special law—Act XXVII, 1870, S. 2.

Public servant disobeying a direction of law with intent to save person from punishment or property from forfeiture.

217. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

A is accused of disobeying a direction of law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed. (Illus. (*f*), S. 441, Cr. Pro. Code.)

In the case of the *Queen* v. *Abdool Juleel*, 2 W. R., 111, it was urged that the accused, who was charged with contravening S. 160 of the Criminal Procedure Code (old Code), in irregularly releasing from custody a person whom he had arrested, intending thereby to screen him from legal punishment, could not be convicted unless the accused knew the person would be certainly punished; but the High Court held all that it was necessary to show was that the person released was in danger of being subjected to legal punishment, and the accused acted with the intention of screening him.

Public servant framing an incorrect record or writing with intent to save person from punishment or property from forfeiture.

218. Whoever, being a public servant and being, as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Proof of the intention of the accused is essential—*Queen* v. *Shama' Churn Roy*, 8 W. R., Cr. R., 27.

A Kulkarni in Madras is liable under this Section if he makes a false report of an offence in his village with the requisite intent—*Reg.* v. *Mahawár Ram Chandra*, 7 Bom. R., Cr. Ca., 64.

In the case of the *Queen* v. *Hurdut Surma*, 8 W. R., Cr. R., 68, defendant, a Police officer, was charged with making a false report in order to screen two offenders. At the trial before the Court of Session, proof of the fact that

these two persons were afterwards convicted was admitted in evidence, as bearing on the question of the defendant's intention, but the High Court held, that as the point for decision was the knowledge or belief of the accused when he made the report, the guilt or innocence of those persons was immaterial, and the reception of such evidence amounted to a misdirection.

Where a public servant made an entry to save a chowkeedar from being fined by his superior in the Police,—*Held* the term "legal punishment" did not apply to a case of this kind—*Queen* v. *Jungh Lall*, 19 W. R., Cr. R., 40. But see definition of "illegal," S. 43, and note under S. 177.

Public servant in a judicial proceeding corruptly making an order, report, &c., which he knows to be contrary to law.

219. Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Commitment for trial or confinement by a person having authority who knows that he is acting contrary to law.

220. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement in the exercise of that authority knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Where certain persons were proved to have unlawfully committed others to confinement, the question arose whether malice would be inferred from the unlawful act without further proof, and it was held that in order to support a conviction there must be proof of some wilful excess of authority—a guilty knowledge superadded to an illegal act—*Reg.* v. *Narayan Babaji*, 9 Bom. R., 346.

Intentional omission to apprehend on the part of a public servant bound by law to apprehend.

221. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say:

Punishment.

With imprisonment of either description for a term which may extend to seven years, with or without fine, if the person

in confinement, or who ought to have been apprehended, was charged with or liable to be apprehended for an offence punishable with death ; or

With imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with or liable to be apprehended for an offence punishable with transportation for life, or imprisonment for a term which may extend to ten years; or

With imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for an offence punishable with imprisonment for a term less than ten years.

That he, on or about ——, at ——, being a public servant, (state the nature of office held by the prisoner, so as to make him a public servant, legally bound as such public servant to keep in confinement A B charged) with the offence of ——, an offence punishable with (state the punishment), intentionally suffered such person to escape, and that he has thereby, &c. (5 W. R., Cr. L., 6, No. 246, 1866 ; 8 W. R., Cr. L, 8, No. 744, 1867).

In order to make an escape, there must be an actual arrest on justifiable grounds. (2 Hawk., C. 19, Ss. 1, 2).

The offence of aiding a prisoner-of-war to escape is not complete if such prisoner is acting in concert with those under whose charge he is, merely to detect the defendant who was supposed to have assisted in the escape of other prisoners, and such prisoner having no intention to escape—*Rex* v. *Martin Russ and R. C. C.*, 194.

"Offence" includes acts punishable under a local or special law—Act XXVII, 1870, S. 2.

Intentional omission to apprehend on the part of a public servant bound by law to apprehend a person under sentence of a Court of Justice.

222. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence, or lawfully committed to custody (S. 8, Act XXVII, 1870), intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say;

Punishment.

With transportation for life, or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in

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confinement, or who ought to have been apprehended, is under sentence of death: or

With imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life or penal servitude for life, or to transportation or penal servitude or imprisonment for a term of ten years or upwards; or

With imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement or who ought to have been apprehended, is subject by a sentence of a Court of Justice to imprisonment for a term not extending ten years, or if the person was lawfully committed to custody (S. 8, Act XXVII, 1870).

"Offence" includes acts punishable under local or special law—Act XXVII, 1870, S. 2.

Escape from confinement negligently suffered by a public servant.

223. Whoever, being a public servant, legally bound as such public servant, to keep in confinement any person charged with or convicted of any offence, or lawfully committed to custody (S. 8, Act XXVII, 1870), negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

The word "confinement" has no reference to any circumscribing limits. So where certain Jail Burkundazes, who were charged with allowing prisoners to escape in a bamboo jungle, were released on the ground that this Section referred only to persons in confinement, *i.e.*, within circumscribing limits, and did not apply to prisoners in a bamboo jungle; the High Court held that the defendants were bound, as public servants, to keep the prisoners of the Jail in confinement without any reference to circumscribing limits; and, further, that if a public servant, who has charge of a person charged with murder, negligently allows him to escape from the high road, he is liable to punishment (B. G. O. No. 2367T, S. 1866). So also that a Jail Burkundaz is liable to punishment for allowing a prisoner to escape while employed out-side the Jail walls. (B. G. O. No. 770T, A. 1865.)

Quære.—Is sanction as required in S. 468, Cr. Pro. Code, necessary for offences under Ss. 217—223—*Reg.* v. *Parsram Keshab*, 7 Bom. R., Cr. Ca., 61.

"Offence" denotes a thing punishable by the Code, or any special or local law (S. 40)—Act XXVII, 1870, S. 2.

By S. 324, Act X, 1872, a conviction is proved by producing a certificate under the hand of the Clerk of the Crown or other person having charge of the records of the Court in which the conviction took place. See note under S. 75.

Resistance or obstruction by a person to his lawful apprehension.

224. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged, or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—The punishment in this Section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

A charge of having escaped from custody may be enquired into and tried wherever the person happens to be when the charge is made. (Illus. (*d*), S. 67, Cr. Pro. Code.

If a person, confined for an offence, is charged with escaping from such confinement, the charge should state the offence for which he was confined. (5 W. R., Cr. L., 1, No. 154, 1866). Where a prisoner escapes from custody while on his way to undergo sentence of transportation, he is liable under this and not under S. 226—*Ramsamy*, 4 Mad. R., 182.

When a prisoner is convicted at the same trial for escaping from lawful custody, in which he has been detained on account of an offence, and also for such offence, the punishment awarded on the first charge must be in addition to that awarded on the second—*Queen* v. *Dhoonda Bhooya*, 8 W. R., Cr. R., 85.

By S. 316 of the Procedure Code any sentence passed on an escaped convict for the escape may be ordered to take place immediately or after the expiration of the former sentence. Judges and Magistrates should be careful to comply with the provisions of this section and specify in their warrants the date from which the sentence is to have effect—20 W. R., Cir. 5, No. 9, 1873. This procedure does not apply to persons escaping from confinement in hajut or other lawful confinement, as such persons are not escaped convicts, and in such cases the sentence should take effect immediately—H. Ct., Cr. L., No. 480, 1864.

By S. 40, as now amended by S. 2, Act XXVII, 1870, this Section is re-enacted and made to apply to cases where the "offence" is an act punishable under a local or special law, and not an offence under the Code. But even with this extension the purview of the Section is somewhat narrow. It only applies to escape from arrest for an "offence," and does not meet the case of escape from arrest under civil process—*Reg.* v. *Connon*, 6 Bom. R., Cr. Ca., 16. Such arrest is not for an offence. Neither does it appear that escaping from detention under the Procedure Code, otherwise than for an offence, or failing to furnish security for good behaviour. I suppose detentioning as a lunatic is punishable, and it is possible that the question might be fairly argued that detention in default of paying maintenance, or for failing to give security to keep the peace, &c., is not of such a nature that any escape from it is penal.

Resistance or obstruction to the lawful apprehension of another person.

225. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts

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to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

Punishment.

Or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with transportation for life, or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is liable, under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with transportation for life, or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

This Section is not restricted to cases in which the person arresting is a Police officer, but applies to any lawful arrest whatever. (1 W. R., 235, Cr. L., No. 463, 1863.) A Police officer duly appointed under Act V, 1861, was engaged on the discharge of his duty at a time when an unlawful assembly took place ; it was held that he was competent to apprehend any of the members of such unlawful assembly, and a person who rescued the party apprehended was guilty of rescuing from lawful custody within the meaning of the Section—*Queen* v. *Assun Shurrup*, 13 W. R., Cr. R., 75. See note under last Section.

By S. 40 of the Code, as amended by Act XXVII, 1870, S. 2, the penalty provided in this Section applies to similar cases where the act is an offence under a *local* or *special* law.

"225A. Whoever escapes or attempts to escape from any custody in which he is lawfully detained for failing,

under the Code of Criminal Procedure, to furnish security for good behaviour, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both." (S. 9, Act XXVII, 1870).

Unlawful return from transportation.

226. Whoever, having been lawfully transported, returns from such transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

To constitute an offence under this Section, it is necessary that the convict should have been actually sent to a penal settlement, and have returned before the term of his transportation had expired or been remitted. So where a person sentenced to transportation, escaped on his way to the place of transportation, a conviction under this Section and not under S. 224 was considered illegal—*Reg.* v. *Rama Sawmy Marava*, 4 Mad. J., 72.

Violation of condition of remission of punishment.

227. Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

See S. 322, Cr. Pro. Code, and S. 23, Act V, 1871.

Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.

228. Whoever intentionally offers any insult or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Persons guilty simply of gross prevarication in giving evidence cannot be punished as an obstruction to justice—*Government* v. *Purkus Chunder Dass*, N. A. R., 1858, 135; *Reg.* v. *Auba bin Bhivrass*, 4 Bom. R., Cr. Ca., 5; nor can persons refusing or neglecting to give direct answers—*Reg.* v. *Pandubin Vithogi*, *id.*, 6; nor those reluctantly speaking the truth, nor giving inconsistent answers—*Queen* v. *Chota bhurry Poramanik*, 15 W. R., Cr. R., 5. But no doubt they would be liable if they were convicted of doing these acts with the *intention* to insult or cause an interruption—*Reg.* v. *Jaimal Shrávan*, 10 Bom. R., 69.

CHAP. XII. Ss. 229, 230.

The conviction should state that the Judge was sitting in a stage of a judicial proceeding the nature of which should be clearly shown—*Prokash Chunder Dass, petitioner*, 12 W. R., Cr. R., 64.

"*Summary Punishment.*"—By S. 435, Cr. Pro. Code, when offences under Ss. 178, 179, 180, 228 of this Code are committed in the view or presence of any Court, the Court may detain the offender in custody, and at any time before rising, punish the offender by a fine of rupees 200, and in default of payment by imprisonment in the Civil Jail for not exceeding one month unless the fine be not sooner paid. In such case the Court must record the facts constituting the offence, and the offender's statement, as as well as the finding and sentence. So a conviction will be set aside if the facts constituting the contempt are not recorded—*Paucheenadu Tamberrin*, 4 Mad. R., 229. So also unless the offender is called on for a defence and it is recorded—*Kashenath Vithal* v. *Dag Gobind*, 7 Bom. R., 102. Except under Ss. 435, 436, and 472, Cr. Pro. Code, a Court cannot try a person for contempts of its own authority (S. 473, C. Pro. Code). See note at top of Chap. X.

Where a person was adjudged guilty of contempt by the Bombay High Court in its original jurisdiction, he was imprisoned on the criminal side of the Bombay Jail—*Harivallalehdas Kulliandas* v. *Manickchand*, 7 Bom. R., O., 172.

The words "judicial proceeding" shall be taken to include any proceeding under the Registration Act, Act VIII, 1871. (Act VIII, 1817, S. 82.)

Personation of a juror or assessor.

229. Whoever, by personation or otherwise, shall intentionally cause or knowingly suffer himself to be returned, empanelled, or sworn as a juryman or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled, or sworn; or, knowing himself to have been so empanelled, returned, or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

As to persons disqualified from serving as Jurors or Assessors, see C. P. Code, S. 334.

CHAPTER XII.

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

Coin.

230. Coin is metal used for the time being as money and stamped and issued by the authority of some State or Sovereign Power in order to be so used. (Act XIX, 1872, S. 1.)

It would be sufficient to prove that the metal was used as money, if it were proved that such coins were current in the bazar or current in payment. Thus gold mohurs, *viz.*, Old Companies, Kuldars and Jeypore are coins within the definition, though they do not pass at a fixed value—*Queen* v. *Bhimraj Marwarry*, 2 Boulnois, 48; *Queen* v. *Kunj Beharee*, 5 N. W. R., 187.

Coin stamped and issued by the authority of the Queen, or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the Queen's dominions, is designated as the Queen's coin.

Queen's coin.

Illustrations.

(*a.*) Cowries are not coin.
(*b.*) Lumps of unstamped copper, though used as money, are not coin.
(*c.*) Medals are not coin, inasmuch as they are not intended to be used as money.
(*d.*) The coin denominated as the Company's Rupee is the Queen's coin.

231. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting coin.

Explanation.—A person commits this offence who, intending to practise deception or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

By Section 28 a person is said to counterfeit who causes one thing to resemble another, intending by means of that resemblance to practise deception or knowing it likely that deception will thereby be practised, and it is not essential that the imitation should be exact. This resemblance is a matter of fact, and if it does not exist, the offence of counterfeiting is not committed. Thus it is probable that the impressing a money stamp on an irregular piece of metal, not rounded, and unfinished, so as not to be in a state to pass current, would not amount to counterfeiting. The final stage would not have been reached.

To support a charge of counterfeiting it is not necessary that the defendant should be detected in the act. This may be inferred from circumstances. So where there was proof that a person was caught with counterfeit pice, a mould, and other instruments under circumstances indicating the mould had been recently used, it was held sufficient—*Government* v. *Hassun Buksh*, N. A. R., 1831, 95.

232. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, the Queen's coin, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Counterfeiting the Queen's coin.

In England whether coin is the Queen's coin or not is a mere question of fact, which may be determined by evidence of common usage or notoriety; and I suppose the same evidence would be admissible in *India*. Such coins as have been struck under any Act might be proved by the Act itself.

233. Whoever makes, or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended

Making or selling instrument for counterfeiting coin.

to be used for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Making or selling instrument for counterfeiting Queen's coin.

234. Whoever makes, or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Possession of instrument or material for the purpose of using the same for counterfeiting coin.

235. Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the coin to be counterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

On a charge of possessing coining instruments with guilty intent, evidence may be given of defendants previously uttering bad money in proof of the criminal intention (Arch., 193). The same evidence has been admitted by the Nizamut Adawlut—*Government* v. *Aratoon and two others*, 2 N. A. R., 186; *Government* v. *Bechoo Lahoo Tutteree*, N. A. R., 1859, 115.

There is no definition of possession under the Code. By S. 1, C. 99, 24 & 25 Vic., which provides for offences against the Queen's coin, it is declared that where the having any matter in the custody or possession of any person is mentioned in the Act, it shall include not only the having it by himself in his personal custody or possession, but also the knowingly and wilfully having it in the actual custody or possession of any other person, and also the knowingly and wilfully having it in any dwelling-house or other building, lodging, apartment, field, or other place open or enclosed, whether belonging to or occupied by himself or not, or whether such matter shall be had for his own use or benefit or for that of any other person. The necessity of specially providing in such detail for the term "possession" suggests that some necessity for it also exists in India to prevent a failure of justice.

Abetting in India the counterfeiting out of India of coin.

236. Whoever being within British India abets the counterfeiting of coin out of British India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

Import or export of counterfeit coin.

237. Whoever imports into British India, or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Import or export of counterfeits of the Queen's coin.

238. Whoever imports into British India, or exports therefrom, any counterfeit coin which he knows or has reason to believe to be a counterfeit of the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Delivery to another of coin possessed with the knowledge that it is counterfeit.

239. Whoever, having any counterfeit coin, which at the time when he became possessed of it he knew to be counterfeit, fraudulently or with intent that fraud may be committed delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

This Section refers to a person other than the coiner, who procures or obtains or receives counterfeit coin—*Queen* v. *Sheobux*, 3 N. W. R., 150.

A is accused of fraudulently delivering to another person a piece of counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that at the time of its delivery it was possessed of a number of pieces of counterfeit coin is relevant. (Illus. (*b*), S. 14, Act I, 1872).

A is accused of fraudulently delivering to B a counterfeit rupee.

The question is whether the delivery of the rupee was accidental. The facts that, before or soon after the delivery to B, A delivered counterfeit rupees to C, D, and E are relevant as showing the delivery to B was not accidental—Illus. (*c*), S. 15, Act I, 1872.

Delivery of Queen's coin possessed with the knowledge that it is counterfeit.

240. Whoever, having any counterfeit coin, which is a counterfeit of the Queen's coin, and which, at the time when he became possessed of it, he knew to be a counterfeit of the Queen's coin, fraudulently or with intent that fraud may be committed delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

CHAP. XII. S. 241.

The charge should state the coin delivered, the Queen's coin of which it was a counterfeit, and the name of the person to whom it was delivered. (5 W. R., Cr. L., 7, No. 256, 1866.)

Delivery to another of coin as genuine which when first possessed the deliverer did not know to be counterfeit.

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin, which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration.

A, a coiner, delivers counterfeit Company's Rupees to his accomplice B, for the purpose of uttering them. B sells the Rupees to C, another utterer, who buys them, knowing them to be counterfeit. C pays away the Rupees for goods to D, who receives them not knowing them to be counterfeit. D, after receiving the Rupees, discovers that they are counterfeit, and pays them away as if they were good. Here D is punishable only under this Clause, but B and C are punishable under Section 239 or 240 as the case may be.

Charge.—That you, on or about the ———, day of ———, at ———, knowing a coin to be counterfeit, delivered the same to another person by name A B as genuine, and thereby committed an offence punishable under S. 241 of the Indian Penal Code, and within the cognizance of the Court of Session (Part II, Sched. III, Cr. Pro. Code).

"Neither this, nor the previous, Section would meet one common case of dealing in counterfeit coin as selling by some one not being the coiner, and after the coin is made, who has not the coin at the time of sale, and who does not deliver it. But as the seller must order him, he would fall under the law of abetment as instigating the person having possession to commit the offence." (Commr.'s 2nd Rep., S. 208.)

Under the English rules of evidence proof of collateral facts is freely admissible in cases of uttering counterfeit coin. Thus, proof of the possession, or of the prior or subsequent utterance either to the prosecutor himself or to other persons, of other bad money, though of a different description, and though itself the subject of separate indictment, is admissible as material to the question of guilty *knowledge* or *intent*. (Taylor, L. Ev., S. 322; Ros. 91; Arch., 193.) The same is admisible in India, see note to S. 239.

By S. 13, C. 99, 24 & 25 Vic., whosoever shall, with intent to defraud, tender, utter or put off as, or for any of the Queen's current gold or silver coin, any coin not being such current gold or silver coin or any *medal* or piece of metal, or mixed metals, &c., is liable to imprisonment with or without hard labour for 12 months. A person was convicted under this Section for putting off for a half sovereign a medal of the same size and colour which had on its obverse side a head similar to that of the Queen, but surrounded with the inscription "Victoria Queen of Great Britain" instead of "Victorió Deí Gratia," and a round querling and not square—*Reg.* v. *Robinson*, 10 Con., Cr. C., 181. It may be well doubted whether the present Section would meet such a case, and whether it would amount to anything more than cheating under this Code—*In re Marian Fernandez*, Bom. H. C., 6th Sept., 1864.

Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.

242. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Charge.—That you, on or about the ——, day of ——, knowing a coin to be counterfeit, attempted to induce another person by name A D to receive it as genuine, and thereby committed an offence punishable under S. 242 of the Indian Penal Code, and within the cognizance of the Court of Session. (Part II, Sched. III, Cr. Pro. Code.)

The omission of the word "fraudulently" in the charge is not material unless defendant was misled by the omission. (Illus. (*a*), S. 243, Cr. Pro. Code.)

Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.

243. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

"Whether a person who is possessed of bad money knows the money to be bad, and whether, knowing it to be bad, he intends to put it in circulation, are questions to be decided by the circumstances of the case. A few bad rupees which should evidently be fresh from the stamp would be stronger evidence than a greater number of bad rupees which appeared to have been in circulation for years. A few bad rupees, all obviously coined with the same die, would be stronger evidence than a much larger number which might be detected in a large mass of treasure." (P. C., Note I, 48.)

Having a large quantity of counterfeit coin in possession, under suspicious circumstances and unaccounted for, is evidence of having procured it with intent to utter it as good. So when a person was found in possession of 4 spurious crowns of the same date and mould; 13 spurious half crowns of the same date, and 14 spurious shillings of the same date and mould, wrapped upon separate piece of paper, a conviction for possession with intent to utter, knowing the same to be false, was upheld—*Reg.* v. *Jarvis*, 7 Cox., 53.

A is accused of fraudulently having in his possession counterfeit coins which he knew to be counterfeit. A offers to prove that he asked a skilled person to examine the coin as he doubted whether it was counterfeit or not, and then that person did examine it and told him it was genuine. A may prove these facts as explaining his conduct. (Illus. (*e*), S. 21, Act I, 1872.)

In England proof of previously uttering is admissible to show guilty knowledge (Arch., 653; Ros., 375), and probably the same is receivable in the Courts in India (see note, Ss. 239, 240, 241).

Person employed in a mint causing coin to be of a different weight or composition from that fixed by law.

244. Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Unlawfully taking from a mint any coining instrument.

245. Whoever, without lawful authority, takes out of any mint, lawfully established in British India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulently diminishing the weight or altering the composition of any coin.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—A person who scoops out part of the coin, and puts anything else into the cavity, alters the composition of that coin.

Fraudulently diminishing the weight or altering the composition of the Queen's coin.

247. Whoever fraudulently or dishonestly performs on any of the Queen's coin, any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Altering appearance of any coin with intent that it shall pass as a coin of a different description.

248. Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.

249. Whoever performs on any of the Queen's coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

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Delivery to another of coin possessed with the knowledge that it is altered.

250. Whoever, having coin in his possession with respect to which the offence defined in Section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently, or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

A charge under this Section should state what operation had been performed on the coin to alter its appearance. Reference to S. 247 or 248 is not sufficient. (2 W. R., Cr. L., 11, No. 95, 1865; *id.*, 5, No. 34, 1865.)

By Act XXIII, 1870, silver coins are a legal tender in satisfaction of all engagements, provided they are not diminished more than two per cent. in weight, and are not clipped, or filed or defaced otherwise than by use, and such as are so diminished may be refused. But the Code does not make circulation of debased coin an offence, any more than circulation of coin which has been reduced below the proper weight by use; it is an offence to pass debased coin only, when the party passing it knows that it has been diminished in weight, or altered in composition or appearance against the provisions of the Code, making such diminution or alteration an offence.

Delivery of Queen's coin possessed with the knowledge that it is altered.

251. Whoever, having coin in his possession with respect to which the offence defined in Section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently, or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Possession of altered coin by a person who knew it to be altered when he became possessed thereof.

252. Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the Sections 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.

253. Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the Sections 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered.

254. Whoever delivers to any other person as genuine, or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in Sections 246, 247, 248 or 249 has been performed, but in respect of which he did not, at the time when he took into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed or attempted to be passed.

Counterfeiting a Government stamp.

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with transportation for life,

or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.

256. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or selling instrument for the purpose of counterfeiting a Government stamp.

257. Whoever makes or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sale of counterfeit Government stamp.

258. Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of a counterfeit Government stamp.

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Using as genuine a Government stamp known to be counterfeit.

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

The stamp used as genuine must be a counterfeit stamp. So if a person sells a one-anna stamp as a one-rupee stamp, it is not an offence under this Section, but amounts to cheating—*Queen* v. *Shurroop Chunder Doss*, 2 W. R., Cr. R., 65.

Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it, with intent to cause loss to Government.

261. Whoever, fraudulently or with intent to cause loss to Government, removes or effaces from any substance bearing any stamp issued by Government for the purpose of revenue any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Using a Government stamp known to have been before used.

262. Whoever, fraudulently or with intent to cause loss to Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Erasure of mark denoting that stamp has been used.

263. Whoever, fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession, or sells or disposes of any such stamp from which such mark has been erased or removed, or sells, or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

Fraudulent use of false instrument for weighing.

264. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

The instrument must be "false," and the fraudulent use of a true balance does not fall under this Section, but may amount to cheating. See *Queen* v. *Sharoop Chand Dass*, 2 W. R., Cr. R., 65.

On this Section the Commissioners remark (2nd Rep., Ss. 220, 221):—"The intention, however, must be alleged in laying the charge, though it may be a matter of inference only from the fact of possession and the attending circumstance as manifesting the purpose, and the inference may of course be rebutted . . . . When the incorrectness of the scale is so visible that there is no attempt to cover or conceal it, there can be no ground for imputing fraud from the defect alone; the circumstances negative the intention of fraud, and no charge would lie against the party using the balance. On the other hand, a false balance artfully contrived to escape detection in the use of it carries with it a presumption of fraudulent intent." So the Bombay High Court has held that the mere possession of weights in excess of the authorised standard will not support a conviction under S. 266, which requires that a fraudulent intent must be charged and proved—*R.* v. *Damoohar Dulji*, 1 Bom. R., 181.

See Cr. Pro. Code, S. 381, for the power of Police to search for false weights, measures or instruments for weighing.

Fraudulent use of false weight or measure.

265. Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Being in possession of false weights or measures.

266. Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

See note on S. 264.

Making or selling false weights or measures.

267. Whoever makes, sells, or disposes of any instrument for weighing, or any weight or any measure of length or capacity, which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIV.

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

Public nuisance.

268. A person is guilty of a public nuisance who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

The term "person" includes any company or association or body of persons whether incorporated or not (S. 11).

See note on S. 431 as to navigable rivers.

The omission of a person to keep his horses from straying does not of itself constitute a public nuisance without proof of some *common* injury having ensued, as it is not an omission which "must necessarily cause injury, &c., to persons having occasion to use a public right" within the meaning of this Section—*Joynath Mundul and others* v. *Jommal Sheik and another*, 6 W. R., Cr. R., 71. So it has been held that though a common gambling-house, *i.e.*, one which is kept or used for profit or gain, may be a nuisance, yet neither the person who admits gamblers into it nor the gamblers can be convicted under this section without proof of actual annoyance to the public—*Reg.* v. *Hau Nagji*, 7 Bom. R., Cr. Ca., 74. So that a prostitute does not commit a nuisance by visiting a Dâk Bungalow, unless she annoys the public—*Queen* v. *Musumat Begum*, 2 N. W. R., 349. So it has been held that, to support a conviction for an offence under this Section, it must be proved that injury, danger, or annoyance has been caused, either in regard to the enjoyment of property, or the exercise of a public right, on the part of the community or of any particular class of people—*Begg* v. *Lamessor*, 9 W. R., Cr. R., 70.

A previous sanction to the establishment of a trade does not entitle the proprietors to continue the business if it be a public nuisance.

No one has a right to corrupt the air of a particular locality by the exercise of a noxious trade, simply because at the commencement of the nuisance no person was in a position to be injured by it; and no prescriptive right can be acquired to maintain, and no length of time can legalize a public nuisance—*Munc. Commr.* v. *Mahomed Ali*, 14 W. R., Cr. R., 4.

Persons are not at liberty to place a quantity of earth upon any part of a public road, whether it is a part actually used for the passage of vehicles or not; nor can he interfere with the use of it according to the public right. So filling up a ditch forming part of a public way is a *nuisance—Roopnarain Dutt*, 18 W. R., Cr. R., 38.

By S. 519, Cr. Pro. Code, a Magistrate of the District or a Magistrate of a Division of a District, or any Magistrate specially empowered, may enjoin any person not to repeat or continue a public nuisance as defined in S. 268 of this Code or any local or special law.

Nuisances punishable under the Code may be the subject of a civil action before a criminal prosecution has been preferred—*Jina Runchod* v. *Jodha Ghela*, 1 Bom. R., 2.

Negligent act likely to spread infection of any disease dangerous to life.

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

The Madras High Court has held that innoculation is not an illegal or negligent act, and unless it is proved that it was done negligently with the knowledge or belief that it was likely to spread the infection of a disease dangerous to life, or that there was some negligent dealing with the patient after innoculation with the same knowledge or belief, there can be no conviction under this Section —2 Mad. Jur., 324.

Malignant act likely to spread infection of any disease dangerous to life.

270. Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

This Section punishes the offence defined in it irrespective of the actual mischief caused. If any person died of a dangerous disease, and his death could be traced to infection caused maliciously, he would be chargeable with culpable homicide. (Commr.'s 2nd Rep., S. 226.)

A is tried under S. 270, Indian Penal Code, for malignantly doing an act likely to spread the infection of a disease dangerous to life, and is acquitted. The act done afterwards causes a person permanently to lose his sight, A may be charged, under S. 325, with voluntarily causing grievous hurt to that person. (Illus. (*d*), S. 460, Cr. Pro. Code.)

Disobedience to a quarantine rule.

271. Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other

places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Adulteration of food or drink which is intended for sale.

272. Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Sale of noxious food or drink.

273. Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

The sale of adulterated articles of food as pure and unadulterated is not an offence under this Section, but may amount to cheating. It must be proved that the food was made noxious, and the vendor knew or had reason to believe it was so.

The Code does not define what is an article of food or drink, but it evidently does not include drugs or medical preparations. By S. 14, Ch. 84, 23 and 24 Vic., articles of food or drink include not only all alimentary substances, but also all eatables or drinkables whatsoever, except medical drugs or articles usually taken or sold as medicines.

The *onus* of proving negligence rests with the complainant, and it will not be inferred from the mere happening of an accident, unless the accident is one which does not usually happen in the ordinary course of things, and therefore affords in itself a presumption of negligence. (Taylor, L. Ev., S. 150.)

Adulteration of drugs.

274. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Sale of adulterated drugs.

275. Whoever knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Sale of any drug as a different drug or preparation.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Fouling the water of a public spring or reservoir.

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.

Making atmosphere noxious to health.

278. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood, or passing along a public way, shall be punished with fine which may extend to five hundred Rupees.

Rash driving or riding on a public way.

279. Whoever drives any vehicle or rides on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

The offences described in Ss. 279—289 are punishable irrespective of the actual mischief caused by them. If grievous hurt be caused under such circumstances as will bring the act within the definition of "voluntarily causing

grievous hurt," "the offender will be liable for it. If death be caused with the requisite intention or knowledge, the offender is liable for culpable homicide or murder." (Commr.'s 2nd Rep., Ss. 231-2; *Queen* v. *Gorachand Gopee and others*, 5 W. R., Cr. R., 45.) See Ss. 337-338.

The actual driver and not the owner is liable under this Section—*Sarrymore* v. *Pernendoo Deo Rai*, 14 W. R., Cr. R., 32.

Rash navigation of a vessel.

280. Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

A ferry boat contractor was convicted under this Section and S. 109 of abetting the rash navigation of a vessel, on the evidence that the boat hired by him in fulfilment of the contract was upset from not containing sufficient ballast. *Held*, that as there was no evidence to show that the contractor intentionally omitted to provide the ferry boat with what he knew to be necessary for safe navigation, the conviction could not be supported.—*Reg.* v. *Sakaram Gobind*, Bom. H. Ct., July 1870.

Exhibition of a false light, mark, or buoy.

281. Whoever exhibits any false light, mark, or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Conveying person by water for hire in a vessel overloaded or unsafe.

282. Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

A, with the assistance of only two others, plied a ferry boat, which was out of order, and had a crack. He took in one hundred passengers, and as a consequence the boat was upset, and seven persons drowned. *Held* they should be charged, and tried under this Section, and not S. 336.—*R.* v. *Khoda Jagya*, 1 Bom. R., 137.

Danger or obstruction in a public way or navigation.

283. Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction, or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred Rupees.

In England it has been held to be a public nuisance to lay timber in a public river, although the soil on which it is laid belongs to the party, provided it produces an obstruction—*R.* v. *Smith*, 3 Reb., 754; and it would probably be punishable under this Section.

There is no definition in the Code of a public line of navigation. In England the flowing of the tide in a creek or river is strong *primâ facie* evidence that it is such—*R.* v. *Montague*, 4 B. & C., 598. But the best proof is the evidence of those who used it. So where the question was whether a creek was a public navigable river or not, instances of persons going up it to cut reeds and on parties of pleasure without the consent of the person claiming exclusive property in the creek, were held sufficient evidence for a jury to presume it a public river—*Miles* v. *Rose*, 5 Taunt., 704. See note on S. 431.

The danger must be caused by some act or omission to take order with property. So it would not be an offence under this Section if a river was obstructed by a wrecked vessel—*Brown* v. *Mallet*, 5 C. B., 599.

Negligent conduct with respect to any poisonous substance.

284. Whoever does, with any poisonous substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any person, or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Negligent conduct with respect to fire or combustible matter.

285. Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

"*Injury*."—The word in this Section is not limited to personal injury, but includes injury to property—*Reg.* v. *Natha Lalla*, 5 Bom. R., Cr. C., 67.

The first part of the Section only applies to a rash or negligent use of fire; it does not apply to knowingly using it.

Negligent conduct with respect to any explosive substance.

286. Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any explosive substance in his

possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Negligent conduct with respect to any machinery in the possession or under the charge of the offender.

287. Whoever does, with any machinery, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Negligence with respect to pulling down or repairing buildings.

288. Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Negligence with respect to any animal.

289. Whoever, knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

If the animal be not shown to be vicious or unruly, the *onus* of proving negligence lies with the prosecution.—*Queen* v. *Brojonarain Pubraj*, 2 W. R., Cr. R., 51.

The negligence must be such as would probably lead to danger to human life or of grievous hurt. So when a pony kicked a child on a road, a conviction under this Section was set aside. The Court held—

"The High Court are of opinion that, even assuming the negligent keeping of the pony, there is no evidence that such insecure keeping would *probably* lead to danger to human life or of grievous hurt. If the pony had been proved to be vicious, and the defendant to be cognizant of the fact, there would have been evidence of the commission of the offence defined in this Section. It is not in the opinion of the Court the quality of an ordinary pony to endanger life or inflict grievous hurt. That the pony did in this instance kick scarcely

affects the question. The likelihood of the consequence must be determined by a deduction from facts antecedent to the actual event, and certainly a man cannot be held criminally liable for a consequence of which, so far as appears by the evidence, nothing had occurred to show the probability. In a case almost precisely similar in its fact—*Cox* v. *Burbridge*, 13 C. B., N. S., 430—a very strong Court was unanimous that the facts constituted no evidence of negligence conducing to the result, the kicking of a child on the highway. It would be very dangerous to hold the single fact of the ordinary Indian pony actually kicking any evidence of probable danger to human life or of grievous hurt, and there is absolutely no other evidence." (3 Mad. R., App., 33). But where a person tied up a pony negligently, and the pony getting loose ran about in a crowded bazar, it was held that a conviction was good on the grounds that it is quite possible for a pony, though a perfectly good tempered beast, on ordinary occasions, to create a most probable danger to the lives or limbs of men, women, and children walking in bazar—*Chand Mural, Petitioner*, 19 W. R., Cr. R., 1.

Punishment for public nuisance.

290. Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred Rupees.

Imprisonment passed in default of payment of fine under this Section should be simple and not rigorous—*Reg.* v. *Santu bin Lakhappa Kore*, 5 Bom. R., Cr. Ca., 45. This is open to doubt.

Continuance of nuisance after injunction to discontinue.

291. Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

Sales, &c., of obscene books.

292. Whoever sells or distributes, or imports or prints for sale or hire, or wilfully exhibits to public view, any obscene book, pamphlet, paper, drawing, painting, representation, or figure, or attempts or offers so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Exception.—This Section does not extend to any representation sculptured, engraved, painted, or otherwise represented on or in any Temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

Having in possession obscene book for sale or exhibition.

293. Whoever has in his possession any such obscene book or other thing as is mentioned in the last preceding Section for the purpose of sale,

distribution, or public exhibition, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Obscene songs.

294. Whoever sings, recites, or utters in or near any public place any obscene song, ballad or words to the annoyance of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

CHAPTER XV.

OF OFFENCES RELATING TO RELIGION.

Injuring or defiling a place of worship with intent to insult the religion of any class.

295. Whoever destroys, damages, or defiles any place of worship, or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons, or with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Disturbing a religious assembly.

296. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Trespassing on burial-places, &c.

297. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

"We think that . . . nobody can be convicted under it who has not been guilty of an aggression which, being committed *in a place of worship*, where, by the supposition, a missionary, that is an adversary of the worshippers as regards their faith, has no right to enter, where by entering he is in truth *trespassing*, makes him highly deserving of punishment." (Commrs.' 2nd Rep., S. 260.)

Uttering words, &c., with deliberate intent to wound the religious feelings of any person.

298. Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

The Authors of the Code declare that "a warm expression dropped in the heat of controversy, or an argument urged by a person not for the purpose of insulting and annoying the professors of a different creed, but in good faith for the purpose of vindicating his own, will not fall under the definition contained in the clause . . . . The intention to wound must be *deliberate*, that is, not conceived on the sudden in the course of discussion, but premeditated; it must appear not only that the party being engaged in a discussion with another on the subject, the religion professed by that other, in the course of the argument consciously used words likely to wound his religious feelings, but that he entered into the discussion with the deliberate purpose of so offending him . . . . Although the party uttering offensive words might be conscious, at the moment of uttering them, that they were likely to wound the feelings of his auditors, yet if it were apparent that he uttered them on the spur of the occasion, in good faith, simply to further his argument—that he did not take advantage of the occasion to utter them in pursuance of a deliberate intention to offend—he would not, we think, be liable to conviction . . . . If, however, a party were to force himself upon the attention of another, addressing him, an involuntary hearer, an insulting invective against his religion, he would, we conceive, fall under the definition, for the reasonable inference from his conduct would be that he had a deliberate intention of wounding the religious feelings of his hearer." (Commrs.' 2nd Rep., S. 252.)

CHAPTER XVI.

OF OFFENCES AFFECTING THE HUMAN BODY.

OF OFFENCES AFFECTING LIFE.

Culpable homicide.

299. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

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Illustrations.

(*a.*) A lays sticks and turf over a pit with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in, and is killed. A has committed the offence of culpable homicide.

(*b.*) A knows Z to be behind a bush. B does not know it. A intending to cause, or knowing it to be likely to cause, Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(*c.*) A by shooting at a fowl with intent to kill and steal it, kills B who is behind a bush, A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or cause death by doing an act that he knew was likely to cause death.

Causing death.

It is not necessary for a conviction of culpable homicide that the person accused caused death by his own hand. If he was present, and actively engaged in causing the death of the deceased, he is guilty as a principal—*Queen* v. *Jan Mahomed and Kamoo Gazee*, 1 W. R., Cr. R., 49. So if a person is proved to have abetted the causing of death before death is caused, and is present as a passive spectator when the act causing it is committed, he is guilty of murder under S. 114 (*id.*). But if the causing of death has not been abetted, and is not a probable consequence of the abetment, the abettor is not liable. So where several persons turned out to help A in beating deceased, and A killed him, these persons were held only liable for causing hurt, or grievous hurt, as the killing was far beyond the purpose for which they had turned out—*Queen* v. *Goluck Chung and others*, 5 W. R., Cr. R., 75.

By S. 149, if murder is committed by any member of an unlawful assembly in prosecution of the common object of the assembly, or if it was likely that it would be committed in prosecution of the common object, then all the members are liable. So where several persons armed with deadly weapons attacked persons in possession of a rival cutcherry, and murder was committed by one of them, they were all found guilty—*Queen* v. *Nazoo Fakir and others*, 4 W. R., Cr. R., 26; so also where the members of an illegal assembly armed with *latees* turned out to rescue a prisoner, and some of the members committed murder in so doing, they were all held responsible—*Queen* v. *Bhunjun Pauray and others*, 4 W. R., Cr. R., 8.

By S. 396, if murder is caused in the commission of a dacoity, every dacoit is liable—*Queen* v. *Ruchee Ahen*, 2 W. R., Cr. R., 39.

By the law of England it must be shown that the deceased died from the act of the defendant within a year and a day after the act was done, and if he died after that time, there was a legal presumption that death ensued from some other cause (Arch., 535). There is no such qualification of the words "causes death" in this Section, and the question whether a person caused death by doing an act is one of evidence, to be decided according to the circumstances of every case irrespective of the period which may have elapsed since the act was committed. On this subject the Authors of the Code state (Note M., 56):—

"We have long considered whether it would be advisable to except from the definition any description of acts or illegal omissions, on the grounds that such acts or illegal omissions do not ordinarily cause, or that they cause death very remotely. We have determined, however, to have the clause in its present simple and comprehensive form.

"There is undoubtedly a great difference between acts which cause death immediately, and acts which cause death remotely; between acts which are almost certain to cause death, and acts which cause death only under very extraordinary circumstances. But that difference, we conceive, is a matter to be considered by the tribunals when estimating the effect of the evidence in a particular case, not by the legislature in framing the general law. It will require strong evidence to prove that an act of a kind which very seldom causes death, or an act which has caused death very remotely, has actually caused death in a particular case. It will require still stronger

evidence to prove that such an act was contemplated by the person who did it as likely to cause death. But if it be proved by satisfactory evidence that death has been so caused, and has been caused voluntarily, we see no reason for exempting the person who caused it from the punishment of voluntary culpable homicide."

It is not absolutely necessary that the dead body of the deceased should be found in order to prove that death has been caused—*Queen* v. *Gobind Bagdee*, 3 W. R., Cr. R., 1; *Queen* v. *Petta Gazi and others*, 4 W. R., Cr. R., 19; *Queen* v. *Poorusoollah Sikhdar*, 7 W. R., Cr. R., 14.

The word "act" includes illegal omissions. See S. 32.

By the law of England taking away a man's life by perjury is not considered murder (Arch., 537). Such an act would fall within the present definition of culpable homicide, but is specifically provided for by S. 195. The following was given as an illustration to this Section in the original Code (76):—

"A, with the intention or knowledge aforesaid, falsely deposes before a Court of Justice that he saw Z commit a capital crime. Z is convicted and executed in consequence, A has committed the offence of voluntary culpable homicide."

Intention, &c.

To constitute culpable homicide, the act which caused death must have been done—*first*, with the intention of causing death; *secondly*, or of causing such bodily injury as was likely to cause death; *thirdly*, with the knowledge that the act was likely to cause death. When death is caused by an act without such intention or knowledge, the offence is not culpable homicide. The Authors of the Code made provision for involuntarily causing death, and made the person committing homicide, by rashness or negligence in commission of another offence, liable to two years' imprisonment in addition to the punishment for the offence. This Section was omitted when the Code was passed, but has been added by Act XXVII of 1870. See S. 304A.

The intention or knowledge with which the act which caused death was committed is not constructive or a presumption of law, but a matter of fact to be judged of in each case. The prosecutor is, however, not strictly bound to the facts of the case in proving intention; but is allowed to introduce proof of collateral facts to explain the motives and designs of the accused. Thus, proof of lying in wait, antecedent menaces, quarrels, schemes to do the deceased harm, and even of a previous attempt to commit the same offence, are admissible (Taylor, L. Ev., S. 323; Ros., 93). So in a case in which prisoners were charged with administering poison with intention to kill deceased, proof of administering poison to other persons in the same place was allowed to show the intent—*Mussamut Dayyah* v. *Mussamut Sooah*, N. A. R., 1832, 105. So where the question is whether A poisoned B, the state of B's health before the symptoms ascribed to poison, and habits of B known to A, which afforded an opportunity for the administration of poison, are relevant. (Illus. S. 7, Ev. Act). So are any marks on the ground produced by a struggle at or near where the murder was committed (*id.*). So if a person is beaten to death, anything said or done by the beaters, by slanders or deceased at the time, and shortly before or after it, is admissible. (Illus. S. 6, Ev. Act.)

Anything showing a motive, a particular intention or knowledge, is admissible. So if A is tried for the murder of B, the facts that A murdered C, that B knew this and tried to extort money from A by threatening to make his knowledge public, are admissible to show motive (Illus. S. 8, Ev. Act). So if A is charged with shooting B with intent to kill, the fact that he previously shot at B may be proved to explain his intention (Illus. S. 14, Ev. Act).

In two points the Indian Evidence Act goes far beyond English law. Thus if A and B are jointly tried for the murder of C, a confession of A is admissible against B (Illus. S. 30, Ev. Act); and if A is accused of killing C, any statement made by C before his death as to the *cause* of it is receivable (Illus. S. 32, Ev. Act).

The statement of fact made by a prisoner, which amounts to a confession of guilt on his part, may be taken into consideration so far and so far only as that particular statement of fact itself extends against the other prisoners who are being tried as well as himself for the offence which is thus confessed. It cannot alone be regarded as a sufficient corroboration of the evidence of an accomplice, since the prisoner, if a witness and examined on oath, could not be other than an accomplice, and his evidence would not constitute satisfactory corroboration of the other accomplice's testimony—*Mohesh Biswas*, 19 W. R., 16; 10 B. L. R., 456, *foot-note*.

Before a confession of a person tried jointly with the prisoner can be taken into consideration against him, it must appear that that confession implicates the confessing person substantially to the same extent as it implicates the person against whom it is to be used in the commission of the offence for which the prisoners are being jointly tried. It is this implication of himself by the confessing prisoner which is intended by the Legislature to take the place, as it were of the sanction of an oath, or rather which is supposed to serve as some guarantee for the truth of the accusation against the other. In this case the prisoners keep themselves out of all complicity in the actual facts which are charged against all the prisoners jointly, and upon which the appellants have been convicted with the others, so that the statements which these men make against the appellants, are simply, so far as the charge upon which they have been convicted is concerned, statements made without either the sanction of an oath, or of that substitute for that sanction already referred to, *viz.*, the implication of themselves on the charge upon which they have been tried with the appellants,—in short, without the application of any test of truth whatever—*Belat Ali*, 10 B. L. R., 453.

So where some prisoners charged with murder confessed and implicated others charged only with abetment, it was held that such confessions could not be considered against the latter—*Jaffir Ali*, 19 W. R., 57.

There is not a particle of evidence against a prisoner, except the confession of a co-prisoner, which by S. 30 of the Evidence Act "may be taken into consideration." S. 30 is an exception, and its wording shows that the confession is merely to be an element in the consideration of the evidence. Unless there is something more, a conviction upon it will still be a case of no evidence and bad in law. The conviction was accordingly quashed—Mad. H. Ct. Pro., Jan. 24, 1873; 7 Mad. XV., *App.*; 8 Mad. Jur., 415. See also *Ib.*, 95.

Where death was caused from compression of the brain, and injury to the spinal cord, arising from a severe beating with bamboos, and the Court of Session holding that as there was no bone broken, nor any beating about the head, nor any dangerous weapon used, that the defendants had no intention of causing death, or knowledge that death would ensue, and convicted for grievous hurt; the High Court ruled that the deceased having been beaten brutally and continuously, so that his back was reduced to a state of pulp, and that defendant having returned to the attack, the offence was one of culpable homicide—*Queen* v. *Teprah Fukeer*, 5 W. R., Cr. R., 75. But when A gave B a blow of a light bamboo stick (not more than one inch in diameter) on the side, and caused B's death by rupturing a diseased spleen, A was only convicted of causing grievous hurt—*Queen* v. *Megha Meeah*, 2 W. R., Cr. R., 38. So where the defendant having received some provocation from his wife threw her down, and sitting upon her slapped her, and the woman died from rupture of the spleen, which was diseased, and there were no marks of violence on the body, and the fact that the woman's spleen was diseased was *probably* unknown to the husband, it was held that he was only guilty of causing hurt—*Queen* v. *Panchanun Tantee*, 5 W. R., Cr. R., 97. So where defendant was attacked by deceased, and returned the blow in the mere heat of passion (the report does not state with what), he was only held guilty of grievous hurt—*Queen* v. *Jhopsee Aheer*, 1 W., 125. So where defendants set upon a thief after he was captured, and some of them kicked him and beat him with their fists, whilst two others gave him one or two blows with a small *peera*, and broke his nose. Deceased died in two hours after.

The Judge stated the *peera* was not a heavy one, and the medical evidence showed that death ensued, not from any particular blow, but from the shock caused to the system of the deceased by the successive blows, none of which was capable of producing death. It was held that defendants were only guilty of causing grievous hurt, as their acts did not *conclusively* indicate an intention to cause such bodily injury as was likely to cause death, or knowledge that they were likely to do so—*Queen* v. *Sheikh Solim and others*, 5 W. R., Cr. R., 41.

But although it is definitely determined that death caused by doing an act without the necessary intention and knowledge, does not amount to culpable homicide, the decisions are not conclusive as to the liability of the offender. In the case of the *Queen* v. *Chakor Haree and others*, 6 W. R., Cr. R., 16, the defendants caused the death of the deceased by striking him one blow of a *latee* on the head. It appeared death was caused by effusion of blood under the *dura mater*, though apparently no bone had been broken or dislocated. At the Court of Session defendants were found guilty of causing hurt in the commission of a robbery; but the High Court changed the conviction to one of causing grievous hurt, holding as follows:—"The conviction of voluntarily causing hurt is, however, we think, not suited to the facts proved in evidence. The offence of hurt is described in the Penal Code, S. 319, as causing bodily pain, disease, or infirmity. In this case a *latee* was used, the deceased was struck a heavy blow on a tender part of the head—the forehead—and this blow undoubtedly was the immediate cause of death, and not the shock occasioned by the blow as observed by the Judge. The Penal Code does not provide for simple cases of manslaughter; but it provides for cases of homicide; where, as in the case before us, there has been no intention to cause death, or to cause such bodily injury as is likely to cause death, it falls under the head of grievous hurt, and the practice of our Court has been to rely on this Section in such cases." This decision has been followed in the case of the *Queen* v. *Hurry Dass Paul and others*, 6 W. R., Cr. R., 86, in which the High Court held—"If then the offence, of which the prisoners are guilty, does not fall under the head of 'culpable homicide not amounting to murder,' and from absence of intention to kill, or to do such bodily injury as is sufficient to cause death, does not amount to murder, the only offence of which the prisoners can be convicted is that of causing grievous hurt." The same view of the law was taken in the case of the *Queen* v. *Madur Jolaha*, 8 W. R., Cr. R., 28. On the other hand, in several cases where death was caused under circumstances not amounting to culpable homicide, convictions for simply causing hurt have been adjudged—*Queen* v. *Panchanun Tantee*, 5 W. R., Cr. R., 97.

When intention or knowledge is proved, the absence of motive or want of premeditation on the part of the defendant will not reduce the offence—*Queen* v. *Mahomed Elim, Abdool Kurreem, and Abdool Ghunee*, 3 W. R., Cr. R., 40; *Queen* v. *Juichand Mundle and others*, 7 W. R., Cr. R., 69.

Culpable Homicide and Murder.

Culpable homicide is divided into culpable homicide not amounting to murder, and murder. The distinction between these two offences has been laid down as follows, by a Full Bench, in the case of the *Queen* v. *Gora Chand Gope and others*, 5 W. R., Cr. R., 45:

"There are, in my opinion, several important distinctions between murder and culpable homicide. An offence cannot amount to murder unless it falls within the definition of culpable homicide; for S. 300 merely points out the cases in which culpable homicide is murder. But any offence may amount to culpable homicide without amounting to murder.

"Culpable homicide is not murder if the case falls within any of the exceptions mentioned in S. 300.

"The causing of death by doing an act with the intention of causing death is culpable homicide. It is also murder, unless the case falls within one of the exceptions in S. 300.

"Causing death with the intention of causing bodily injury to any person, if the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, in my opinion falls within the words of S. 299, 'with the intention of causing such bodily injury as is likely to cause death,' and is culpable homicide. It is also murder, unless the case falls within one of the exceptions in S. 300, Cl. 3.

"Causing death by doing an act with the knowledge that such act is likely to cause death is culpable homicide; but it is not murder even if it does not fall within any of the exceptions in S. 300, unless it falls within Cl. 2, 3 or 4 of S. 300, that is to say, unless the act by which the death is caused, is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused or with the intention of causing bodily injury to any person; and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or unless the person committing the act knows that it is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death.

"In speaking of acts I of course include illegal omissions.

"There are many cases falling within the words of S. 299, 'or with the knowledge that he is likely by such act to cause death,' that do not fall within the 2nd, 3rd or 4th clauses of S. 300, such, for instance, as the offences described in Ss. 279, 280, 281, 282, 284, 285, 286, 287, 288, and 289, if the offender knows that his act or illegal omission is likely to cause death, and if, in fact, it does cause death. But although he may know that the act or illegal omission is so dangerous that it is likely to cause death, it is not murder even if death is caused thereby, unless the offender knows that it must in all probability cause death or such bodily injury as is likely to cause death, or such bodily injury as is described in Cl. 2 or 3 of S. 300.

"As an illustration, suppose a gentleman should drive a buggy in a rash and negligent manner, or furiously along a narrow crowded road. He might know he was likely to kill some person; but he might not intend to kill any one. In such a case if he should cause death, I apprehend he would be guilty of culpable homicide not amounting to murder, unless it should be found as a fact that he knew that his act was so imminently dangerous that it must in all probability cause death, or such bodily injury as to bring the case within the 4th clause of S. 400. In an ordinary case of driving the facts would scarcely warrant such a finding . . . . It would not be right in such a case that the offender should be liable to capital punishment for murder. The first part of S. 304 would not apply to the case. That applies only to cases which would be murder if not falling within one of the exceptions in S. 300. If a man should drive a buggy furiously, not merely along a crowded street, but intentionally into the midst of a crowd of persons, it would probably be found as a fact that he knew that his act was so imminently dangerous that it must in all probability cause death, or such bodily injury, &c., as in Cl. 4, S. 300.

"From the fact of a man's doing an act with the knowledge that he is likely to cause death, it may be presumed, that he did it with the intention of causing death, if all the circumstances of the case justify such a presumption; but I should never presume an intention to cause death merely from the fact of furious driving in a crowded street, in which the driver might know that his act was likely to cause death. Presumptions of intention must depend upon the facts of each particular case.

"Suppose a gentleman should cause death by furious driving up to a Railway Station. Suppose it should be proved that he had business in a distant part of the country, say at the opposite terminus; that he was intending to go by a particular train, and that he could not arrive at his destination in time for his business by any other train; that at the time of the furious driving it wanted only two minutes to the time of the trains starting; that the road was so crowded that he must have known that he was likely to run over some person and to cause death; would any one, under the circumstances, pre-

sume that his intention was to cause death? Would it not be more reasonable to presume that his intention was to save the train? If the Judge or Jury should find as a fact that his intention was to save the train, but that he must have known that he was likely to cause death, he would be guilty of culpable homicide not amounting to murder, unless they should also find that the risk of causing death was such that he must have known, and did know that his act must in all probability cause death, &c., within the meaning of Cl. 4, S. 300.

"If they should go further, and infer from the knowledge that he was likely to cause death, that he intended to cause death, he would be guilty of murder, and liable to capital punishment." See also *Queen* v. *Girdharee Sing*, 6 N. W. R., 26, to the same effect.

The *onus* of proving general exceptions lies on the accused (see S. 105, Ev. Act).

Explanation 1.—A person who causes bodily injury to another, who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

"We see no good reason for excepting such cases from the general rule which we propose. It will indeed be in general more difficult to prove that death has been caused by a scratch, than by a stab which has reached the heart; and it will in a still greater degree be more difficult to prove that a scratch was intended to cause death, than that a stab was intended to cause death. Yet both these points might be fully established. Suppose such a case as the following—It is proved that A inflicted a slight wound on Z, a child, stood between him and a large property. It is proved that the ignorant and superstitious servants about Z applied the most absurd remedies to the wound. It is proved that under their treatment the wound mortified and the child died. Letters from A to a confidant are produced. In those letters A congratulates himself for his skill, remarks that he could not have inflicted a more severe wound without exposing himself to be punished as a murderer; relates with exultation the mode of treatment followed by the people who had charge of Z, and boasts that he always foresaw that they would turn the slightest incision into a mortal wound. It appears to us that if such evidence have produced, A ought to be punished as a murderer.

"Again, suppose A makes a deliberate attempt to commit assassination. In the presence of numbers he aims a knife at the heart of Z. But the knife glances aside and inflicts only a slight wound . . . . Suppose that the person who received the wound is under the necessity of exposing himself to a moist climate immediately afterwards, and that in consequence he is attacked with tetanus, and dies. Here again, however slight the wound may have been, we are unable to perceive any good reason for not punishing A as a murderer." (P. C. Note M, 58.)

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child if any part of that child has been brought

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forth, though the child may not have breathed or been completely born.

This shows that killing a child in its mother's womb is not murder; but if the child be born alive and die by reason of the treatment it received in the womb, it is murder.

Murder.

300. Except in the cases hereinafter excepted, culpable homicide is murder if the act by which the death is caused is done with the intention of causing death, or—

2ndly. If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly. If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4thly. If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations.

(*a.*) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(*b.*) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death or such bodily injury as in the ordinary course of nature would cause death.

Several persons attacked deceased, and beat him so severely that he fell down senseless; whilst in this state defendant gave him two or three kicks, and killed him. It was held that he was guilty of murder, as he must have known that, in the state he was in, those kicks were likely to cause death—*Queen* v. *Hurree Raj Bungshee and others*, 3 W. R., Cr. R., 22.

Deceased and defendants meeting together a quarrel ensued in connection with the deceased's having taken the wife of one of the defendants to her father's house. The defendants (four in number) beat deceased with their fists, a ruler and a *karrom*. Finding they had gone too far they offered him rice, which he could not eat. They then attempted to take him home, but he died on the way. The *post mortem* examination showed congestion of the brain, and that the muscles of the skull, face, back, and chest were unnaturally congested from blows of the fist; and that death was caused by violence. The High Court (Justice Seton-Karr *dissenting*) held, that when four men set upon another and beat him unmercifully at intervals, they must be presumed to have known that by such act they were likely to cause death—*Queen* v. *Pooshoo and Haurriah*, 4 W. R., Cr. R., 33.

Defendant having caught deceased thieving, assaulted her so severely that her shoulder blade was fractured; the ulna of each fore-arm broken, and there were marks of two severe blows on the head, and several contusions on the body. The deceased was not labouring under any disease, but was slightly formed, and in a half-starved condition of body. Defendant was held to have committed murder under the 4th clause, though probably no single one of the injuries inflicted would of itself have proved mortal as he must have known his blows were collectively so imminently dangerous, that they would in all probability cause such bodily injury as was likely to cause death—*Queen* v. *Gokool Bowree and others*, 5 W. R., Cr. R., 33.

(*c*.) A, intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

Defendant and deceased (cousins living together) had a quarrel about cattle-trespass. Some time after defendant struck the deceased, who was lying asleep, a blow with a light *latee* having a knob at the end. Deceased died three days afterwards, and a *post mortem* examination showed two parallel fractures in the skull. The High Court (Campbell, J., *dissenting*) decided that the case fell under the form of murder described in this paragraph—*Queen* v. *Sheikh Choollye*, 4 W. R., Cr. R., 35.

Deceased remonstrated with defendant and another for driving cattle across his fields, and was struck on the head by defendant with a heavy bamboo club, 5 feet long, which fractured his skull, and he died in 48 hours after. The case was considered to fall within this Clause—*Queen Rampullut Roy and another*, 1 W., 250.

The defendant and deceased meeting when under the influence of drink, grossly abused each other. This lasted for some time, when defendant ran to his house, about 30 yards distant, and returning with a pestle, struck the other a violent blow on the temple as he was rising from the ground, killing him instantly. Defendant was adjudged to have committed murder under Cls. 2 and 3—*Queen* v. *Dasser Bhooyan*, 8 W. R., Cr. R., 71.

A allowed his child after the mother's death to languish away and die from want of proper sustenance. He persistently ignored the wants of the child though warned of its state and the consequences of his neglect. There was nothing to show that the prisoner was not in a position to support the child. Held, since the father was bound to support the child, and that he had every reason to believe that the child must, in the ordinary course of nature, die through his illegal omission to support it, that he was guilty of murder—*Queen* v. *Gunga Sing*, 5 N. W. R., 44.

Accused snake-charmers persuaded the deceased to allow themselves to be bitten by a poisonous snake, inducing them to believe that they had power to protect them from harm. Held, they must have known that a snake-bite in the ordinary course of nature would cause death, and would have been guilty of murder had not consent been given—*Queen* v. *Poonai Futtemah*, 12 W. R., Cr. R., 7.

(*d*.) A, without any excuse, fires a loaded cannon into a crowd of persons, and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

When culpable homicide is not murder.

Exception 1.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

The Authors of the Code remark (P. C. Note M, 59):

"Neither the English law nor the French Code extends any indulgence to homicide, which is the effect of anger excited by words alone.

"We greatly doubt whether any good reason can be assigned for this distinction. It is an undisputable fact that gross insult by words and gestures have as great a tendency to move any person to violent passions as dangerous or painful bodily injuries." Apparently, on the same principle, the Commissioners state:—"It is purposely left to the Judge to consider whether the provocation be such as would be likely to move a person of ordinary temper to violent passion, not *any person* it is to be understood; but a person of the same habits, manners, and feelings. A discreet Judge would probably reject the plea of provocation by insulting words in one case, and would admit it in another, according as the party might be shown to belong to a class sensitive to insults of this kind or not." (1st R., Ss. 269, 271.)

This exposition of the explanation has not been strictly followed by the High Court. On one occasion abuse was admitted as sufficient to cause grave and sudden provocation—*Queen* v. *Suleem Sheik*, 1 W. R., Cr. R., 23; but it has been lately decided that "mere abusive language, however gross, cannot reduce an act of murder into one of culpable homicide not amounting to murder"—*Queen* v. *Dasser Bhooyan*, 8 W. R., Cr. R., 71. It is submitted that this decision, though good according to English law, is not only inconsistent with this explanation, which does not *exclude* any kind of provocation, but totally opposed to the decisions of the Nizamut Adawlut—*Mussumanaut Subboo* v. *Ghasee*, 1 N. A. Rep., 49; *Besaro* v. *Ram Dyal*, *id.*, 53, &c.

The question of whether the accused caused death in any case under grave and sudden provocation, must depend on the circumstances under which death has been caused. When defendant caught a feeble old woman stealing and killed her, the provocation was not considered so grave or sudden as to reduce the offence—*Queen* v. *Gokool Bowree and others*, 5 W. R., Cr. R., 33.

If the period elapsing between the time when the provocation was given and death was caused, or the manner of causing death evinces deliberation; this exception cannot be pleaded. In short the act must be committed whilst deprived of the power of self-control—*Queen* v. *Yasin Sheikh*, 12 W. R., Cr. R., 69. So when defendant, while struggling with a thief, ordered his brother to bring a *kodalee* and kill him; the *kodalee* was brought from the next room, and defendant killed the deceased with it; he was found guilty of murder—*Queen* v. *Durwan Geer*, 5 W. R., Cr. R., 73. So also when defendant understanding a man had an intrigue with his wife threatened to kill him, and afterwards did so, it was adjuged murder—*Queen* v. *Bhekye, alias Sheikh Anser*, 1 W. R., Cr. R., 46. So where a man found deceased lying with his wife, took him to another house, in which his father was sleeping. The father went out and brought a bamboo; with which deceased was suffocated by placing it on his neck. It was held murder—*Queen* v. *Beechoo Saout*, 19 W. R., Cr. R., 35.

In the following cases the provocation given was sufficient to reduce the offence from murder to culpable homicide not amounting to murder. Where a husband found a man committing adultery with his wife and killed him—*Queen* v. *Maithya Gazee and Esoff*, 6 W. R., Cr. R., 42; so where the husband killed both his wife and her paramour when committing adultery—*Queen* v. *Sheikh Boodhoo*, 8 W. R., Cr. R., 38; so where the husband and two relatives caught a man committing adultery with the wife of one of them and killed him, both the husband and relatives obtained the benefit of this exception—*Queen* v. *Gour Chund Polie and Dwarka Polie*, 1 W. R., Cr. R., 17; *Queen* v. *Goreeboolla*, 5 W. R., Cr. R., 42; so where three brothers found a man lying with their sister and killed him—*Queen* v. *Kasseemoddeen and others*, 4 W. R., Cr. R., 38. The prisoner's wife was forcibly taken to the house of a native physician who alleged her presence was necessary to perform an incantation. Prisoner armed with a sword watched from the roof of a house, and, seeing his wife being violated by deceased, jumped down and struck deceased several blows from which he died. Held, not murder—*Queen* v. *Ramtahal Kahar*, 3 Bom. R., 33.

The above exception is subject to the following provisoes.

First. That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing, or doing harm to any person.

Secondly. That the provocation is not given by anything done in obedience to the law or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly. That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations.

(*a.*) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(*b.*) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(*c.*) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(*d.*) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(*e.*) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(*f.*) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

"We apprehend that grave provocation given by any thing done under *cover* of obedience to the law, or under *cover* of its authority, by a public servant, or its defence in *excess* of what is strictly warranted by the law, in point of violence, or as regards the means used, or the manner of using them and the like, would be admissible in extenuation of homicide under this clause. For example, take the case of Wat Tyler referred to in the note to this chapter. Here was a public officer, a tax-gatherer, who came to "exercise his lawful powers"—in that capacity, but in doing so in a manner unwarranted and highly offensive, Tyler was excited to violent passion, and in his rage killed him on the spot. The Commissioners upon this say, "so far indeed should we be from ranking a man who acted like Tyler with murderers, that we conceive that a Judge would exercise a sound discretion in sentencing such a man to the lowest punishment fixed by the law for manslaughter." (Commr.'s 1st Rep., S. 277.)

Exception 2.—Culpable homicide is not murder if the offender, in the exercise, in good faith, of the right of

private defence of person or property exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration.

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

In some cases there is no right of private defence, and if death is caused with the knowledge or intention described in this Section, then murder is committed; in other cases the right of private defence extends to causing death, and if death is caused in the exercise of that right no offence is committed; in other cases the right of private defence extends to anything less than causing death, and in these cases if anything short of death is caused, or if death is caused under such circumstances as does not bring the act within the definition of culpable homicide, no offence is committed—*Queen* v. *Mitto Sing and others*, 3 W. R., Cr. R., 41; *Queen* v. *Tanoo Shikdar and others*, 3 W. R., Cr. R, 47. If, however, death is caused by a person acting as described under this explanation, and the causing death amounts to culpable homicide not amounting to murder, the offence is not reduced; but if murder is committed, the offence is reduced to culpable homicide not amounting to murder.

Where one party attacked another in possession of a field and attempted to uproot their crops, and one of the assailants was killed by the persons attacked, the latter were found guilty of culpable homicide not amounting to murder—*Queen* v. *Shunker Sing and others*, 1 W. R., Cr. R., 34; so where a person finding a thief coming out of his house through a *sindh* killed him with one blow of a pole-axe—*Queen* v. *Fukeera Chamar*, 6 W. R., Cr. R., 50; so in a case in which the defendant and deceased, uncle and nephew, lived jointly, and the former taking a *kodal* attempted to make a path near his house, and was opposed by his nephew, who attempted to snatch the *kodal* out of his hands, but the latter recovering possession of the *kodal* struck his nephew a blow with it and killed him—*Queen* v. *Fuzza Meeah*, 6 W. R., Cr. R., 89.

But where defendant caught a thief in his house, and the latter struggling to escape, the defendant directed his brother to bring a *kodal* from the next room to kill the thief. The *kodal* was brought, and the defendant killed the thief with two blows. Defendant was found guilty of murder, as he did, and intended to do, more harm than was necessary for any purpose of defence—*Queen* v. *Darwan Geer*, 5 W. R., Cr. R., 73; so where defendant finding a feeble old woman stealing his crop, beat her so violently that she died from the effect of the attack—*Queen* v. *Gokool Bowree and others*, 5 W. R., Cr. R., 33.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law and causes death by doing an act which he in good faith believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Prisoners fearful that if they allowed A an outlaw to escape that they would be punished, and believing they were acting lawfully, attempted to arrest him in accordance with a proclamation to seize him alive or dead and in pursuance of a plan made with the Police. In doing so they killed him while endeavouring to escape. Held, Exception 3 applied—*Queen* v. *Aman*, 5 N. W. R., 130.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

To bring a case within this exception, all the facts mentioned in the exception must be found to exist. So where defendant, whilst quarrelling with his wife, who was cooking his dinner, attacked her with a heavy stool, and struck her such a blow on the head that he fractured her skull, and killed her instantly, and the Court of Session held that this exception applied, as the blow was given in the heat of passion without premeditation, the High Court, setting aside the conviction, directed a new trial, on the ground that there did not seem to have been any fight, and the offender had taken undue advantage, and acted cruelly in attacking her with a heavy stool—*Queen* v. *Akal Mahomed*, 3 W. R., Cr. R., 18. But see the case of the *Queen* v. *Suleem Sheik*, 1 W. R., Cr. R., 23. So where the defendant and deceased had a drunken quarrel, and the defendant, who was the more powerful man of the two, throttled the other and killed him, this exception was held not to apply—*Queen* v. *Akalputtee Goshain*, 5 W. R., Cr. R., 58. So also that it does not apply to a case in which several persons, in consequence of cattle-trespass, deliberately arm themselves for the purpose of turning out the trespassers, and cause death in so doing, as though there may have been a heat of passion and a sudden quarrel originally, the sudden fight without premeditation is absent. (2 W. R., Cr. L., 21, No. 344, 1865.)

A party of villagers turned out armed with *latees* to punish one Soobuk Rai. On their way to deal with him, they were met by two persons named Rosheen and Kashee, who remonstrated with them, which had the effect of turning the anger of the party against themselves. In the meantime relatives of Rosheen and Kashee, came up, and a fight ensued, in which Kashee was killed. It was held that, as the party had not turned out against Rosheen and Kashee, this exception applied—*Queen* v. *Zalim Rai and others*, 1 W. R., Cr. R., 33.

In the case of the *Queen* v. *Rajoo Ghose and others*, 7 W. R., Cr. R., 106, the decision of the High Court appears to disagree with the former rulings of that Court. Deceased and his three brothers quarrelled about some corn which was joint property, and a fight ensued, in which one of the brothers cuffed and kicked deceased; whilst this was going on two servants of the brothers seized deceased, and one of the brothers coming in front of deceased struck him with a *sal log* and fractured his skull, so that he died in two hours after. Defendants were convicted of culpable homicide not amounting to murder under this exception; but, considering that five men attacked one, and two of those held him whilst a third killed him under circumstances amounting to murder, it seems difficult to hold that defendant had not taken "undue advantage" of the deceased. So in the *Queen* v. *Rewal Dosad*, W. R. Sp. Number, Cr. C., 36, it was held by Campbell, J., that when A and B were fighting with *latees*, and B called for assistance which he obtained and killed A, he did not take an unfair advantage. But it seems doubtful if this can be upheld.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration.

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

In a case of Suttee defendants were present, and caused the pile to be lighted by the son of one of them. At first deceased jumped from the pile, but being persuaded returned, and was burnt. Defendants were convicted of culpable homicide not amounting to murder; and it was held that the fact of the woman at first leaving the pile and afterwards returning did not reduce the offence to abetment of suicide—*Queen* v. *Sahebloll and others*, 1 W., 174.

Defendants, at the express request of a boy above 18 years of age, emasculated him. The operation was performed in a rough and dangerous manner, and death ensued in a few hours. They were convicted of culpable homicide not amounting to murder under this exception—*Queen* v. *Baboolun Hijrah and others*, 5 W. R., Cr. R., 7. So where the accused, professed snake-charmers, persuaded the deceased to allow themselves to be bitten by a poisonous snake, inducing them to believe that they had power to protect them from harm, and the Judge found that the prisoners believed, though erroneously, that they could do so,—*Held*, the consent was valid, and the case fell within this clause—*Reg.* v. *Povnâr Fattemah*, 12 W. R., Cr. R., 7. See note on Section 90.

Defendant killed his wife, a woman of 20 years of age, by striking her with an adze. There was no person present when the act was committed; but defendant confessed that he and his wife being overwhelmed with grief for the loss of a child, he killed her in accordance with an agreement they had previously made to commit suicide together. From the position of the body it was proved that the woman was killed in her sleep, and the Court of Session held that defendant was guilty of murder, as, under such circumstances, the woman could not have consented, and this exception did not apply; but the High Court, reversing the finding, held as follows:—"But, admitting this to be so, still the question arises whether the prisoner had not reasonable grounds for believing the woman was still a consenting party to her death. Assuming, as we do, that the prisoner's story is true, what possible reason could he have for thinking that she had abandoned the intention which she had once so clearly entertained, and had so long preserved, even if it were not repeated at the very time he struck her? If this had been a civil transaction, these would have been ample evidence of consent, and it can hardly be said that evidence, which would be sufficient in a civil transaction, is insufficient in exculpation of a prisoner's guilt"—*Queen* v. *Anunto Rurnagat*, 6 W. R., Cr. R., 57.

Culpable homicide by causing the death of a person other than the person whose death was intended.

301. If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

302. Whoever commits murder shall be punished with death, or transportation for life, and shall also be liable to fine.

Punishment for murder

Charge.—That you, on or about the ——— day of ———, committed murder by causing the death of ———, and thereby committed an offence punishable under S. 302 of the Indian Penal Code and within the cognizance of the Court of Session (Schedule III, Cr. Pro. Code).

The charge need not contain a denial of either general or special exceptions. It is complete in itself and is equivalent to stating that the act falls within S. 300; that it does not fall within any of the general exceptions, or any of the five special exceptions to S. 300, or that if it falls within exception 1, one or other of the provisoes applies (S. 439, Illus.). Proof of exceptions of every kind lies on the accused (S. 105, Ev. Act).

Errors or omissions in a charge are not material, unless the accused is misled by them. Thus, A is charged with murdering Khoda Buksh, on the 21st of January. In fact the murdered person's name was Haidar Buksh, and the date of the murder was the 20th of January. A was never charged with any murder but one, and had heard the inquiry before the Magistrate which referred exclusively to the case of Haidar Buksh. The Court may infer that A was not misled, and the error was immaterial. But if he was charged with murdering Haidar Buksh on the 20th, and Khoda Buksh (who tried to arrest him for that murder) on the 21st, and when charged for the murder of Haidar, he was tried for the murder of Khoda only, and the witnesses present in his defence were witnesses in the case of Haidar, the Court may infer he was misled, and that the error was material. (Illus. S. 443, Cr. Pro. Code).

Trial.—The new Code of Criminal Procedure points out that parties may be jointly tried if the offences are committed in the same transaction. So A and B may be charged and tried together for the same murder; so if A commits murder independent of B, but in the course of a robbery in which both were engaged, A and B may be tried together on a joint charge for the robbery and a separate charge for the murder. (Illus. *a* & *b*, S. 458, Cr. Pro. Code.)

A person charged with murder only may be convicted of culpable homicide or causing death by negligence. (Illus., S. 457, Cr. Pro. Code.)

A intentionally causes the death of three persons by upsetting a boat, he may be separately charged, convicted, and sentenced for three offences under this section. (Illus., S. 454, Cr. Pr. Code.)

Autre fois convict.—A is tried for assault and convicted. The person assaulted afterwards dies. A is triable again for culpable homicide; but if A had been convicted before a competent Court for culpable homicide, he could not be afterwards tried for murder on the same facts. (S. 460, Cr. Pro. Code and Illus.)

In a trial for murder the relevant facts are—

1. Did A cause B's death.
2. Did he cause it with the necessary intention or knowledge. See pp.
3. Had he received grave and sudden provocation, or did any other special exception apply.
4. Was he insane at the time of causing death, or does any other general exception apply.

If the subjects of a foreign State kidnap a man from British territory and murder him in a foreign State, they can only be tried for kidnapping by our Courts—*Queen* v. *Dhurmonarain Moitro and others*, 1 W. R., Cr. R., 39.

"*Sentence.*"—Where a person is convicted of an offence falling clearly within the definition of murder, sentence of death should be passed on him, unless there are some valid grounds for mitigating it. (4 W. R., Cr. L., 9, No. 1124, 1865.)

Where several persons are engaged in a murder, sentence of death should be passed on the persons most active in committing the offence, and a secondary sentence on the other persons concerned. (2 W. R., Cr. L., No. 28, 1865; 4 W. R., Cr. L., 9, No. 1124, 1865.)

Absence of premeditation (2 W. R., Cr. L., 9, No. 1124, 1865), or of previous ill-feeling towards the deceased, or of apparent motive for causing his death (2 W. R., Cr. L., 6, No. 39, 1865), or of an eye-witness to the act, such as when a person is convicted on circumstantial evidence, is not sufficient to remit the sentence of death. (2 W, R., Cr. L., 19, No. 300, 1865.)

Sentence of death should not be passed in a case in which murder is committed by a pregnant woman—*Queen* v. *Tepoo*, 3 W. R., Cr. R., 15; but see *Queen* v. *Paubree Auree*, 15 W. R., Cr. R., where pregnancy was held sufficient for not pronouncing a capital sentence; or by a woman who is prompted to cause the death of the deceased in retaliation for injuries inflicted on her by the deceased—*Queen* v. *Tonoo and another*, 6 W. R., Cr. R., 46; or by a person who is intoxicated—*Queen* v. *Ram Nath Gwala*, 3 W. R., Cr. L., 27; or who believes the deceased is a wizard the cause of his child's illness, and that by killing him the child's life will be saved—*Queen* v. *Ooram Sangra*, 6 W. R., Cr. R., 82; or who kills his son, and attempts to commit suicide as a protest against God's injustice in not giving him wealth—*Queen* v. *Bishendhuree Kahar*, 7 W. R., Cr. R., 100; or who causes death by a reckless assault with a lethal weapon without any *intention* of causing death—*Queen* v. *Khouz Sheik*, 5 W. R., Cr. R., 20; or who, though as a rule peaceable and orderly, suddenly runs amuck against all around him —*Queen* v. *Bishonath Bunneea*, 8 W. R., Cr. R., 53.

So where a person was convicted of murder, and the evidence left some doubt as to the precise part he played in the transaction, he was only sentenced to transportation for life—*Queen* v. *Baboo Lall Jhah*, 1 W. R., Cr. R., 48. No rule has been laid down as to what sentence should be inflicted when the body of the deceased cannot be found. In most cases transportation for life has been awarded, but in some extreme cases the Nizamut Adawlut has passed sentences of death.

Now if a woman sentenced to death is found to be pregnant, the High Court shall order execution of the sentence to be postponed and may commute the sentence. (S. 306, Cr. Pro. Code.)

If sentence of death is not passed by a Court convicting a person charged with murder, the Court is bound in its judgment to state the reason why such sentence was not passed. (S. 287, Cr. Pro. Code.)

Punishment for murder by a life convict.

303. Whoever being under sentence of transportation for life, commits murder, shall be punished with death.

See S. 287, Cr. Pro. Code, referred to above.

Punishment for culpable homicide not amounting to murder.

304. Whoever commits culpable homicide not amounting to murder, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to

cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death.

Charge.—That he, on or about the —— day of ——, at——, by causing the death of——, committed culpable homicide, and thereby committed an offence punishable under S. 304 of the Indian Penal Code and within the cognizance of the Court of Session (Schedule III, Cr. Pro. Code).

A person may be tried for culpable homicide, in the district where the deceased suffered the act which caused his death, or where he died. (Illus., Cr. Pro. Code.)

A person charged with murder only can be convicted of culpable homicide. (Illus., S. 45 Cr. Pro. Code.)

A person convicted of culpable homicide by a proper Court cannot afterwards be tried for murder on the same facts. (Illus., S. 466, Cr. Pro. Code.) And if a person be tried on a charge containing heads accusing him of both murder and culpable homicide not amounting to murder, and convicted of the latter offence, the conviction will amount to an acquittal on the graver charge, and cannot be touched in revision or appeal—*Queen* v. *Zyeah Sheikh*, 5 W. R., Cr. R., 2. So where persons charged with both were acquitted of murder and convicted of culpable homicide, the Madras High Court held that it could not interfere with the conviction, although it was of opinion that there was no sufficient evidence to bring the defendants within the exceptions to S. 300—5 Mad. R., App., 10. But if a Judge in such a case, instead of acquitting, found facts inconsistent with guilt for the minor offence only, the High Court could interfere—*Id.*, *Queen* v. *Bezia Bazikar*, 3 W. R., Cr. R., 38. See notes on Ss. 299, 300, 302, 323, 325.

The Court of Session, in all cases in which it may find a person guilty of culpable homicide not amounting to murder, must record in its judgment within which of the exceptions noted under S. 300 the culpable homicide is held to fall, so as not to amount to murder—H. Ct. Cir. No. 5, 1863. Similarly, in cases tried with the aid of a Jury, the Court in its charge should specify to the Jury, and the Jury in their finding declare within which of the exceptions to S. 300 the offence falls—2 W. R., Cr. L., 11, No. 95, 1865. These directions were promulgated on the supposition, that culpable homicide amounted to murder in every case, unless it fell within one or other of the exceptions described in S. 300. But as this view has been set aside by the High Court in the case of the *Queen* v. *Gora Chand Gope*, 5 W. R., Cr. R., 45, they appear only applicable to cases in which the defendant has been found guilty of one or other of the kinds of culpable homicide described in the first two clauses of S. 299. The Judge in charging a Jury should draw a distinction between doing the act with intention to cause death, and doing it with a knowledge that it was likely to cause death, but without any intention to cause it or such bodily injury as was likely to cause it; and ask them to find specifically for either. So when this was not done, the High Court considered the conviction was for the minor offence only—*Queen* v. *Kali Churn Doss*, 18 W. R., Cr. R., 17; *Queen* v. *Ameer Khan*, 12 W. R., Cr. R., 35.

"304A. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both." (S. 12, Act XXVII, 1870).

Negligence may be defined to be the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do—*Degg* v. *Midland R. C.*, 1 H. & K., 781. In

the case of *Nidamasti, Petitioner*, 7 Mad. R., 119, the defendant was acquitted of culpable homicide and convicted under this Section. The Judge found that death resulted from a brutal kicking and beating; but that prisoner did not know it was likely to cause death. The High Court held—

"The Judge finds the brutal beating and kicking and dragging by the hair of the head of an old woman of 60 by a powerful man, who has acted without the smallest provocation. The causal connexion between the brutal assault and the death is found to be undoubted; but the Sessions Judge has convicted the prisoner under the new Section of causing death by a rash act. This Section is, in our opinion, wholly inapplicable to the facts of this case. Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow; but with the hope that they will not and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite the consciousness *(lunuria)*: Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow: but in circumstances which show that the actor has not exercised the caution imcumbent on him, and, that if he had, he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection. It is manifest that personal injury, consciously and intentionally caused, cannot fall within either of these categories, which are wholly inapplicable to the case of an act or series of acts themselves intended, which are the direct producers of death. To say that because, in the opinion of the operator, the sufferer could have borne a little more without death following, the act amounts merely to rashness, because he has caused the experiments too far, results from an obvious and dangerous misconception. We have had great doubt whether we ought not to have remitted this case for a finding whether the Session Judge and the Assessors think that the act was done with such knowledge as to constitute culpable homicide. We are, however, averse to re-opening criminal cases unless also likely compelled to do so. And as the evidence makes out, at least, a case of culpable homicide not amounting to murder, and a legal though inadequate sentence has been passed, we are able, under S. 426 of the Procedure Code, simply to dismiss the appeal." So where a woman beat a lad to death, and the Assistant Magistrate found he had been beaten most severely, it was held he could not convict under this Section—*Mussamut Auhuchia Doendin*, 18 W. R., Cr. R., 23. So that if a person does an act with the knowledge that the consequences will be likely to cause death, he cannot be said to have done it rashly or negligently—*Queen* v. *Mussamut Pemkoer*, 5 N. W. R., 38. Where the rashness or negligence amounts to culpable homicide, this Section does not apply—*Nidamasti, Prisoner*, 7 Mad. R., 119.

Abetment of suicide of child or insane person.

305. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide shall be punished with death or transportation for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Abetment of suicide.

306. If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

In the case of the *Queen* v. *Sahebloll and others* (1 W., 174) three of the defendants abetted a little boy in lighting the pile in a case of suttee, whilst another, who did not then co-operate, took an active part in causing the woman, who had left the pile after it was lighted, to return; the first three defendants were considered guilty of abetting culpable homicide, but the latter of only abetting suicide. The Court held, "It is found by the Assessors and the Judge that the three first defendants abetted a little boy in setting fire to the pile. The boy was the son of one of the appellants who ordered him to apply the fire, the others being present, aided and abetted. It is contended for these appellants that the offence, if proved, is only abetment of suicide, not culpable homicide, but I think that abetment of suicide is confined to the case of persons who aid and abet the commission of suicide by the hand of the person himself who commits the suicide; when another person at the request of, or with the consent of, the suicide has killed that person, he is guilty of homicide by consent, which is one of the forms of culpable homicide. In this case the person who set fire which caused the death by fire is just as much guilty of the homicide as if he had fired a gun or thrown the deceased into the river." Referring to the fourth prisoner, it was held "The Judge simply states as the result of his opinion on the evidence affecting No. 10 that though apparently he did not at first co-operate to cause the death of the widow, he took an active part in causing her to return to the pile . . . . I am of opinion that as Omrao Chowdree did not abet the acts of Nos. 3, 4, 5 in setting fire to the pile, his action (as found by the Judge) only amounted to an abetment of suicide."

Evidence that a woman prepared herself to commit suicide in the presence of the accused, that they followed her to the pyre and stood by her, her step-sons crying "Ram Ram," and that one of the accused admitted that he told her to say "Ram Ram," and that she would become suttee, justified the inference that they had engaged with her for the commission of a suttee—*Queen* v. *Mohib Panday*, 3 N. W. R., 316.

Attempt to murder.

307. Whoever does any act with such intention or knowledge and under such circumstances that if he by that act caused death he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to transportation for life or to such punishment as is hereinbefore mentioned.

When any person offending under this Section is under sentence of transportation for life, he may, if hurt is caused, be punished with death. (S. 11, Act XXVII, 1870).

Illustrations.

(*a.*) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this Section.

(*b.*) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this Section, though the death of the child does not ensue.

(*c.*) A, intending to murder Z, buys a gun and loads it: A has not yet committed the offence defined in this Section. A fires the gun at Z. He has committed the offence defined in this Section, and if by such firing he wounds Z he is liable to the punishment provided by the latter part of this Section.

(*d.*) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence in this Section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this Section.

CHAP. XVI. S. 308.

The present Section differs from the corresponding Section in the original Code, inasmuch as the latter contained the words "and carries that act or omission to such a length as at the time of carrying it to that length he contemplates as sufficient to cause death" after the word "murder." To that Section it was objected that indulgence should be shown to persons who have repented in time to undo their former acts; but the Commissioners (1st Rep., S. 344) considering that amendment was unnecessary, stated "If A, after setting the gun, repents and removes it, we are of opinion that it is unnecessary, for, in the case supposed, we apprehend that without the words proposed to be added, A would not be chargeable under Cl. 308. The last act undoing the previous act, could not, we conceive, be charged with that previous act as an offence, unless for anything he knew it might have effect; in the meantime, for example, if A set the spring gun in the morning, expecting that Z should pass the place in the afternoon, and knowing that he could not pass before noon, in the case, if A repenting of his purpose removed the spring gun before noon, that is before it is possible it could have effect, it appears to us the last act would exonerate him; not so if he only knew that Z was to pass in the course of the day, it might be in the same hour, and that it was a mere accident that he did not pass before he removed the spring gun. In the former case he kept it within his power to prevent the mischief intended, and did take the necessary steps to prevent it in time."

In order to constitute an offence under this Section, the act committed by the accused must be an act capable of causing death in the natural and ordinary course of event; but it is not so under S. 511. So when a person was charged under this Section with attempting to murder B, the facts being that he presented an uncapped gun at B (believing it to be capped) with the intention of murdering him. Held he could not be convicted under this Section; but that a conviction under S. 511, with 299 and 300 was good. Couch, C.J., said:—"The two first heads are framed under S. 307. The words of that Section are, 'whoever does any act with such intention or knowledge, and *under such circumstances*, that if he by that act caused death he would be guilty of murder, shall be punished,' &c. Now it appears to me looking at the terms of this Section, as well as at the illustration to it, that it is necessary, in order to constitute an offence under it, that there must be an act done under such circumstances that death might be caused if the act took effect. The act must be capable of causing death in the natural and ordinary course of things; and if the act complained of is not of that description, a prisoner cannot be convicted of an attempt under this Section.

"The illustrations given bear out this view, one is that of a man firing a loaded gun, and another is that of a man placing food mixed with poison on another's table. Both these acts are capable of causing death; but in the present case although the act was done with the intention of causing death and was likely in the belief of the prisoner to cause death, yet in point of fact it could not have caused death, and it therefore does not come within that Section"—*Reg.* v. *Cassidy*, 4 Bom. R., Cr. C., 17. See note on S. 511.

Attempt to commit culpable homicide.

308. Whoever does any act with such intention or knowledge and under such circumstances that if he by that act caused death he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and if hurt is caused to any person by such act, shall be punished with imprisonment of either description for

a term which may extend to seven years, or with fine, or with both.

Illustration.

(*a*.) A, on grave and sudden provocation, fires a pistol at *Z*, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder, A has committed the offence defined in this Section.

Attempt to commit suicide.

309. Whoever attempts to commit suicide, and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, and shall also be liable to fine.

Imprisonment must be awarded for an offence under this Section—*Reg.* v. *Chenbiowa*, 1 Bom. R., 4.

Thug.

310. Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a thug.

Punishment.

311. Whoever is a thug shall be punished with transportation for life, and shall also be liable to fine.

The charge of being a thug may be enquired into wherever the person charged happens to be when the charge is made. (Illus., S. 67, Cr. Pro. Code.)

OF THE CAUSING OF MISCARRIAGE, OF INJURIES TO UNBORN CHILDREN, OF THE EXPOSURE OF INFANTS, AND OF THE CONCEALMENT OF BIRTHS.

Causing miscarriage.

312. Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A woman who causes herself to miscarry is within the meaning of this Section.

The prosecution must prove that the woman was *really* pregnant at the time the offence was committed—*Queen* v. *Kaluh Pattur*, 15 W. R., Cr. R., 4.

Where a child was full grown, the High Court declined to convict under this Section, as it supposes an expulsion of the child before the full period of

gestation is completed; but convicted of an attempt under this and S. 511—*Queen* v. *Arunjee Bewa*, 19 W. R., Cr. R., 32.

Causing miscarriage without woman's consent.

313. Whoever commits the offence defined in the last preceding Section without the consent of the woman, whether the woman is quick with child or not, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Death caused by an act done with intent to cause miscarriage.

314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and

If act done without woman's consent.

if the act is done without the consent of the woman, shall be punished either with transportation for life or with the punishment above-mentioned.

Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

If A kills Z by administering abortives to her with the knowledge that these abortives are likely to cause her death, he is guilty of voluntary culpable homicide If A took such precautions that there was no reasonable probability that Z's death would be caused, and if the medicine were rendered deadly by some accident which no human sagacity could have foreseen, or some peculiarity in Z's constitution such as there was no ground whatever to expect, A will be liable to no punishment whatever on account of the death, but will of course be liable to the punishment provided for causing miscarriage. (P. C. Note M, 53.)

So, following this, it has been held that where a poisonous drug was administered to procure miscarriage, and it was not proved that the accused knew that the drug was likely to cause death, &c., they were acquitted by the High Court of murder and convicted under this Section—*Queen* v. *Kalla Chand Gope*, 10 W. R., Cr. R., 59.

Act done with intent to prevent a child being born alive or to cause it to die after birth.

315. Whoever, before the birth of any child, does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

A charge under this Section should describe the act by which the accused intended to prevent the child being born alive, and should also state that the act was not caused in good faith for the purpose of saving the mother—3 W. R., Cr. L., 5, No. 477, 1865.

Causing death of a quick unborn child by an act amounting to culpable homicide.

316. Whoever does any act under such circumstances that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustration.

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured but does not die; but the death of a quick unborn child with which she is pregnant is thereby caused. A is guilty of the offence defined in this Section.

Exposure and abandonment of a child under twelve years by parent or person having care of it.

317. Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—This Section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

The words "if the child die in consequence of the exposure" mean that death must be caused from cold or some other result of exposure. So where a child was found soon after its exposure, and died from ineffectual means being used to feed it, a conviction for murder was set aside—*Queen* v. *Khodabux Fakeer*, 10 W. R., Cr. R., 52.

To support a conviction there must be proof that the accused was the father, mother, or person having care of the child; that he or she abandoned it, and intended to do so—1 W. R., Cr. L., 10, No. 1099, 1486.

"*Exposure, what amounts to.*"—Under 24 & 25 Vic., Cap. 100, S. 27, abandoning or exposing a child under two years, whereby its life is endangered, or health impaired, is penal. In the case of *Reg.* v. *Falkingham and another*, 21 L. T. Rep., 679, the mother, one of the prisoners, told the putative father before the birth that she would father the child on him, and that he would have to pay for it. He said he would not; but if sent to him that he would keep it. About five weeks after birth prisoner carefully wrapped it up, put it in a hamper, left it at a Railway Station, and paid the fare. The hamper was addressed, "with care to be delivered immediately." The transip and delivery occupied about one hour, and when opened the child was found alive and lived for three weeks, when it died from other causes. Held it was a case of abandonment and exposure within the statute.

"*Abandonment.*"—This Section refers to cases of abandonment and desertion in such a manner that children not being able to take care of them-

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selves may run the risk of dying or being injured. It implies that they are left without any protection. So it does not apply to the case of a wife running away and leaving the children with her husband—*Feluni Haria m*, 16 W. R., Cr. R., 12.

Concealment of birth by secret disposal of dead body.

318. Whoever by secretly burying or otherwise disposing of the dead body of a child, whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or both.

That she, on or about ——, at ——, by secretly burying the dead body of her infant child, intentionally concealed the birth of such child, and that she has thereby, &c.—8 W. R., Cr. L., 4, No. 672, 1867.

This Section only refers to the disposal of a dead body, and does not meet the case of a person depositing a child alive in any place, and abandoning it, which is punishable under the last Section—*Reg.* v. *May*, 6 L. T. Rep., 362.

The Section follows the wording of 9 Geo. IV, C. 31, 114, on which several conflicting decisions were given. It was first held that the words "or otherwise disposing" were governed by the previous words "secret burying," and therefore meant a disposing *ejusdem generis;* in other words, a final disposition of the body, such as a burying underground, beyond which it would not be probable the mother would think of going with a view to the concealment of the body—*Reg.* v. *Ash*, 2 M. & Rob., 294; *Reg.* v. *Snell*, 2 M. & Rob., 244; but these decisions were overruled, and it was subsequently held that any concealment of the body, whether intended to be final or temporary, was within the act—*Reg.* v. *Goldthorpe*, 2 M. C. C., 244; *Reg.* v. *Farnham*, 1 Cox C. C., 349. It would therefore appear that these words "or otherwise disposing" include every possible mode of disposing of the body. So it has been held that the words "discharges of a debtor by composition real or otherwise" are tantamount to an enumeration of every possible kind of discharge—*Salkeld* v. *Johnson*, 1 Hale and Snells, 329.

"*Child.*"—In *Reg.* v. *Berriman*, 6 Cox C. C., 389, Erle, J., held that the offence of concealment could not be committed unless the child had arrived at such a state of maturity at the time of birth that it might have been a living child, and that if a woman miscarried when the fœtus was but a few months old, and there could be no chance of life, there could be no conviction; but this has since been overruled by Baron Martin, who stated he saw nothing to limit the word "child" in the Act to one likely to live or likely to die, and held that a fœtus not bigger than a man's finger, but having the part and shape of a child, is a "child" within the Statute 24 & 25 Vic., C. 100, S. 60—*Reg.* v. *Colmer*, 9 Cox C. C., 506. On the precedent of *Reg.* v. *Berriman*, mentioned above, the Madras High Court held, that a person cannot be convicted for concealing the birth of a fœtus four months old—6 Mad. R. App., 63.

OF HURT.

Hurt.

319. Whoever causes bodily pain, disease, or infirmity, to any person, is said to cause hurt.

Many of the offences which fall under the head of hurt will also fall under the head of assault. A stab, a blow which fractures a limb, the flinging of

boiling water over a person, are assaults, and are also acts which cause bodily hurt. But bodily hurt may be caused by many acts which are not assaults. A person, for example, who mixes a deleterious poison and places it on the table of another; a person who places a scythe in the grass in which another is in the habit of walking; a person who digs a pit in a public path, intending another may fall into it, may cause serious hurt, and may be justly punished for causing hurt. But they cannot, without extreme violence of language, be said to have committed assaults. (P C. Note M, 67.)

Grievous hurt.

320. The following kinds of hurt only are designated as "grievous."

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

"To disfigure" is to do a man some external injury, which detracts from his personal apperance, but does not weaken him, as the cutting off of a man's nose or ears. (Commr.'s 1st Rep., S. 373.)

When defendant gave a person such a blow with a stick on the head, that in the opinion of the Judge the hair would never grow over the mark, it was held not to amount to a disfiguration. (MSS. case referred by the Judge of Jessore.)

But when it appeared that A branded a girl's cheeks with a red hot iron, it was held that if the scars were of a character to cause any permanent disfigurement grevious hurt had been caused—*Reg.* v. *Ante bin Dabroas*, 1 Bom. R., 101.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

In a case in which prosecutor was only seventeen days in hospital, but the medical evidence showed she was three days in danger, defendant was found guilty under this Section—*Queen* v. *Bassoo Rannah*, 2 W. R., Cr. R., 29. But there must be actual proof that the person who received the hurt was in danger. So where persons were drugged, and the medical evidence showed that though senseless their lives were not endangered, a conviction for causing grievous hurt was set aside—*Queen* v. *Joy Gopal*, 4 W. R., Cr. R., 4.

If the act does not endanger life, there must be proof that the person to whom hurt was caused has been actually in severe bodily pain; or disabled for twenty days. So disabling a man from pursuing his ordinary pursuits for fifteen days does not amount to grievous hurt—*Queen* v. *Bishwooram Sutma and another*, 1 W. R., Cr. R., 9.

The Commissioners remark (1st Rep., S. 374):—

"Again an injury to the right hand may, in the case of a clerk, keep him from his work for twenty days, which, if it happened to the left hand, would be of no consequence. An injury to the foot may prevent one man from following his business in which walking is necessary, which, if it happened to another man in a sedentary employment, would not interrupt him at all. The proposed criterion is therefore unsatisfactory, but some criterion is necessary, and it is difficult to devise a better."

See note to S. 322.

Voluntarily causing hurt.

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

Voluntarily causing grievous hurt.

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt, and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration.

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

There is a considerable diversity of opinion among the Judges of the High Court as to the offence which has been committed by a person who has caused the death of another, under such circumstances that the act does not amount to culpable homicide. In many of the recorded judgments it has been laid down as a rule of law that in all such cases the defendant must be considered as having voluntarily caused grievous hurt—*Queen* v. *Megha Meeah*, 2 W. R., Cr. R., 39; *Queen* v. *Chakor Haree and others*, 6 W. R., Cr. R., 16; *Queen* v. *Madur Jalaha*, 8 W. R., Cr. R., 29; *Hurry Dass Paul and others*, 6 W. R., Cr. R., 86; *Queen* v. *Bhadhoo Poramanick*, 4 W. R., Cr. R., 23; though in a few minor cases persons causing death under similar circumstances have been convicted of voluntarily causing hurt only—*Queen* v. *Jhopsee Aheer*, 1 W. R., 125; *Queen* v. *Panchanun Tantee*, 5 W. R, Cr. R., 97. There is some difficulty in reconciling the former decisions with this Section, which describes in what cases a person is considered to have caused grievous hurt. Constructive law is wholly foreign to the Code, and it appears unsound to draw any conclusion as to the relative positions of voluntarily causing grievous hurt and committing culpable homicide, from the constructive relation of manslaughter to murder under English law. The Code makes no provision for involuntarily causing death, and it would be more consonant to the spirit of it

to convict for voluntarily causing grievous hurt, or using criminal force, according as the facts proved in evidence support one or other of the offences. The Commissioners remark (1st Rep., S. 377): "We agree with Mr. Bacon in what we conceive to be his meaning as to the duty of the Judge, that is to say, that he is not to trouble himself with seeking for direct proof of what the offender thought was likely to happen, but is to learn it from the nature of his act, taking him to have intended grievous hurt, or at least to have contemplated it as likely to occur, where he did what every body knows is likely to cause grievous hurt, and the more certainly drawing his conclusions when there is evidence of previous enmity against the party who has suffered. If the act was such that nothing more than simple hurt could reasonably be thought likely to ensue from it, then, although grievous hurt may unexpectedly have ensued, it would be his duty to convict the offender of simple hurt only under Clause 323, judging that grievous hurt was not in contemplation; for, according to Clause 322, a person can be convicted of grievous hurt only when the result and the intention correspond, or when grievous hurt has been suffered from an act which was intended to cause grievous hurt, though it may be of a different kind."

See note to S. 299.

Punishment for voluntarily causing hurt.

323. Whoever, except in the case provided for by Section 334, voluntarily causes hurt shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand Rupees, or with both.

When death ensues Magistrates should be careful not to take upon themselves to absolve defendants from the grave charges of murder or culpable homicide and convict for hurt or grievous hurt, unless it is quite clear that there is no sufficient evidence to justify a commitment—12 W. R., Cr. Cir., 7.

Voluntarily causing hurt by dangerous weapons or means.

324. Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument, which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

The charge should state that the weapon used was one of the kind mentioned in this Section—3 W. R., Cr. L, 15, No. 654, 1845.

The charge should describe the instrument used as one of the kind mentioned in the text. Merely describing it as "a dangerous weapon" is not sufficient—2 W. R., Cr L., 21, No. 342, 1865; 8 W. R., Cr. L., 1, No. 644, 1867.

It is not necessary that his manner of using the weapon must be such as is likely to cause death—7 Mad. R., App., 11.

Punishment for voluntarily causing grievous hurt.

325. Whoever, except in the case provided by Section 335, voluntarily causes grievous hurt shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Charge.—That you, on or about the —— day of——, at ——, voluntarily caused grievous hurt to ——, and thereby committed an offence punishable under S. 328 of the Indian Penal Code, and within the cognizance of the Court of Session (Schedule III, Cr. Pro. Code).

A person tried and acquitted for an offence under S. 270, if the act causes grievous hurt may be subsequently tried for grievous hurt; but a trial for voluntarily causing hurt bars a second trial for voluntarily causing grievous hurt, if the first Court could try for the latter offenec. (Illus., S. 460, Cr. Pro. Code.)

The charge should state that the hurt was caused "voluntarily" and not "willingly"—2 W. R., Cr. L., 20, No. 342, 1865.

A is wounded in the District of X, and during twenty days is unable to follow his ordinary pursuits in the District of X, where he is being treated. A may be tried in either district (Illus. (*b*), S. 65, Cr. Pro. Code).

Fifteen persons were found guilty of rioting armed with deadly weapons, of causing hurt to one person and grievous hurt to another, and were sentenced separately on each count. The separate sentences were upheld in appeal on the grounds that rioting did not necessarily lead to grievous hurt, and the hurt and grievous hurt were caused to separate persons—*Queen* v. *Azgur and others*, 5 W. R., Cr. R., 19. So if A with six others commits the offence of rioting, grievous hurt, and of assaulting a public servant engaged in suppressing the riot, A may be separately charged, convicted, and punished for offences under Ss. 147, 325, and 152. (Illus., S. 454, Cr. P. Code.)

A person convicted for causing grievous hurt could not, under the old Procedure Code, be also convicted of house-traspass caused in committing it—*Queen* v. *Basoo Rannah*, 2 W. R., Cr. R., 29. He can now.

A Court convicting for causing grievous hurt should show in its decision under which of the heads of S. 320 the case falls—1 W. R., Cr. L., 5, No. 968, 1864.

Grievous hurt is punishable not by fine only, but by imprisonment, the offender being also liable to fine—*Queen* v. *Shaudh Peshugler*, 2 W. R., Cr. R., 32; *Queen* v. *Menajuddin*, 2 W. R., Cr. R., 33.

See note under Ss. 299, 300, 323.

Voluntarily causing grievous hurt by dangerous weapons or means.

326. Whoever, except in the case provided by Section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal,

shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt to extort property or to constrain to an illegal act.

327. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The charge should specify the name of the person from whom the prisoner intended to extort property—2 W. R., Cr. L., 7, No. 48, 1865.

"Offence" includes anything punishable under a local or special law (S. 40).

Administering stupefying drug with intent to cause hurt, &c.

328. Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug or other thing with intent to cause hurt to such person or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The words "other thing" must be taken to mean "other unwholesome thing," and not other thing simply. Hence administering a substance regarding the nature of which no evidence was given and which was intended to act as a charm and facilitate an intrigue with a married woman was held not to be an offence under this Section—*Queen* v. *Jote Ghoraee*, 1 W. R., Cr. R., 7.

Administering deleterious drugs without endangering life is properly punishable under this Section and not under S. 326—*Queen* v. *Joygopal*, 4 W. R., Cr. R., 4.

Held that a person who placed in his toddy pots juice of the mesk bush knowing if taken it would cause injury, intending thereby to detect a thief who stole his toddy, and it was drunk by and caused injury to certain soldiers who purchased it from an unknown vendee, was rightly convicted of "causing to be taken an unwholesome thing with intent to injure"—*Reg.* v. *Dhanja Daji*, 5 Bom. Q. R., Cr. C., 59.

"Offence" includes anything punishable under a local or special law (S. 40).

Voluntarily causing grievous hurt to extort property or to constrain to an illegal act.

329. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any property or valuable security, or of constraining

the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

"Offence" includes anything punishable under a local or special law (S. 40).

Voluntarily causing hurt to extort confession or to compel restoration of property.

330. Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer or any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations.

(*a.*) A, a police officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this Section.

(*b.*) A, a police officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this Section.

(*c.*) A, a Revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this Section.

(*d.*) A, a zemindar, tortures a ryot in order to compel him to pay his rent. A is guilty of an offence under this Section.

Where persons were tortured to extort a confession of witchcraft, *held* witchcraft was not an offence under the Code, and the persons torturing not liable under this Section but S. 324—*Queen* v. *Baboo Moondu*, 13 W. R., Cr. R., 22.

In the case of the *Queen* v. *Nim Chand Mookerjee* (20 W. R., Cr. R., 43), it was argued that no person could be convicted under this Section unless an offence was actually committed, but the High Court repudiated this doctrine and held—

"But as it appears to us it was not the intention of the Legislature to confine the offence under this Section to cases in which an offence had actually been committed, we think that, upon the true construction of that Section, it is wholly immaterial whether an offence has been committed or not. It seems to us that the offence which that Section intended to describe is that of inducing a person by hurt to make a statement or confession having reference to an offence or misconduct, and whether that offence or misconduct had been committed is immaterial."

"Offence" includes anything punishable under a local or special law (S. 40).

Voluntarily causing grievous hurt to extort confession or to compel restoration of property.

331. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

"Offence" includes anything punishable under a local or special law (S. 40; Act XXVII, 1870, S. 2).

Voluntarily causing hurt to deter public servant from his duty.

332. Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Voluntarily causing grievous hurt to deter public servant from his duty.

333. Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

A rescues B, a person in lawful custody, and causes grievous hurt to C, a constable in whose custody B was. A may be separately charged and punished for offences under S. 225 and this Section (Illus., S. 453, Cr. Pro. Code).

Voluntarily causing hurt on provocation.

334. Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both.

Causing grievous hurt on provocation.

335. Whoever causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand Rupees, or with both.

Explanation.—The last two Sections are subject to the same provisoes as Exception 1, Section 300.

It is not essential to a conviction under this Section, that the grievous hurt should have been caused voluntarily—*Queen* v. *Umbica Tantinee and another*, 4 W. R., C. R., 21.

Punishment for act which endangers life or the personal safety of others.

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty Rupees, or with both.

Causing hurt by an act which endangers life or the safety of others.

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred Rupees, or with both.

Causing grievous hurt by an act which endangers life or the safety of others.

338. Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand Rupees, or with both.

Defendant was being driven in a carriage to her house through the streets of the town between 7 and 8 P.M. at an ordinary pace and in the middle of the road. The night was dark, and the carriage without lamps; but the syce and coachman kept shouting and warning the foot passengers. The carriage struck deceased, an old deaf man, who was knocked down, run over, and killed. Defendant was convicted under this Section, and the Session Judge referred the case on the grounds that there was no evidence of criminal negligence on the part of defendant coachman, and, even if such were proved, the defendant could not be held criminally liable for the acts of her servant. The Court held:—

"The High Court are of opinion that, if the facts made out in this case justified a conviction under S. 358, they must also have justified a conviction for culpable homicide. The Section deals with grievous hurt engendered by an act done so rashly and negligently as to endanger human life or the personal safety of others. The conscious doer of such an act, when death results from it, both before and after the new Section, is guilty of culpable homicide on the facts of such a case as this. The High Court are not at all prepared to say that only the immediate agent could be guilty. It is perfectly easy to conceive cases in which the master of the servant would be at least as much a principal as the engineers in *R.* v. *Lowe*, 3 C. & K., 123, and as the co-racing omnibus drivers in *Reg.* v. *Swindell and Osborne*, 2 C. & K., 230. Looking at the passive submissiveness of native servant, it would be very dangerous doctrine indeed to hold the master inside entirely guiltless if his directions procured the rash and negligent act.

"The High Court are not at all prepared to say that the existence of contributory negligence could be a complete defence where in English law it would be so to an action . . . . . and a very pertinent observation of Blackburn, J. (L. & C., 571) shows that if the question were the same, a man could not be convicted of murder for abetting suicide. These cases at common law on this point have really no bearing as matter of law. The conduct of the person injured will, of course, have important influence as a matter of fact upon the relation of cause and effect between the act of the accused and the consequences induced.

"In the present case the question for this Court is whether there was any evidence that the death of the deceased was induced by an act negligently and rashly directed by the accused.

"That the driving was temperate and ordinary driving there seems no doubt. That there was ample time for any person endowed with the fair exercise of his natural faculties to get out of the way seems also undoubted. The driver and passenger must necessarily assume that ordinary state of faculties. Then will the absence of lights supply that evidence of negligence and rashness? The Court are of opinion that it will not. That the absence of candles was due to a violation of a distinct order of the accused is in her favour. That she directed careful driving when she discoverd their absence, rebuts any possibility of inferring that rash driving was due to her directions even if it existed as it did not. On the ground, therefore, that there was no evidence which a Judge could properly leave to a jury that the death of the deceased was caused by any negligent or rash act of the accused, the High Court quash the conviction and sentence, and direct that the fine be refunded." (6 Mad. R., App., 31). See note under Ss. 304, 338.

OF WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT.

Wrongful restraint.

339. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception.—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this Section.

Illustration.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path, Z is thereby prevented from passing. A wrongfully restrains Z.

Wrongful confinement.

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Illustrations.

(*a.*) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(*b.*) A places men with fire-arms at the outlets of a building, and tells Z that they will fire at Z, if Z attempts to leave the building. A wrongfully confines Z.

Punishment for wrongful restraint.

341. Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both.

Punishment for wrongful confinement.

342. Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand Rupees, or with both.

The name of the person wrongfully confined should be inserted in the charge—5 W. R., Cr. L., 7, No. 256, 1866.

By S. 124, Cr. Pro. Code. no Police officer can detain a person accused of an offence beyond 24 hours. The 24 hours commence from the time the accused is taken into custody by the Police, and has no reference to the time such person may have been in the custody of others, such as the village chowkeedar or the injured person. (Rules and Regulations for Bengal Police.)

If a Police officer, instead of arresting a person himself, directs some private individual to take charge of him, such Police officer is responsible, the person arrested by his order being in law in his custody—*Queen* v. *Behary Sing and others*, 7 W. R., Cr. R., 4.

To support a charge of wrongfully detaining for more than 24 hours, it must be shown that the detention was continuous—*Indrobar Shaha, Appellant*, 1 W. R., Cr. R., 5.

S. 124, Cr. Pro. Code, does not give a Police officer unlimited power to detain any person for any period less than 24 hours, and cannot be pleaded in bar of punishment to a charge of wrongful confinment, unless it be shown that the detention was justified by the circumstances of the case—*Queen* v. *Prosona Ghosal*, 6 W. R., Cr. R., 88.

In the case of *Paran Kusam Narasaya Pantulu* v. *Captain R. A. C. Stuart*, 2 Mad. R., 396, plaintiff was accused of an offence for which he could not be arrested without warrant, and received a letter from defendant, a Police officer, directing him to proceed before the Magistrate. Two constables were directed to accompany him to prevent him speaking to any one. This was held to amount to wrongful confinement. The Court held:

"In this case it cannot be doubted upon the facts that plaintiff was directed to go to Russulkenda, and that the presence of the constables who followed or accompanied him rendered it by no means a matter of option whether he would go or not. It is manifestly not necessary to constitute imprisonment that there should be a continuous application of superior physical force. In the felicitous language of Mr. Justice Coleridge "It is one part of the definition of freedom to be able to go wheresoever one pleases, but imprisonment is some thing more than the mere loss of this power, it includes the notion of restraint within some limits defined by a will or power exterior to our own." Mr. Justice William in his judgment puts a case almost precisely similar to the present as an example of imprisonment. It is quite clear therefore from the full discussion which the subject has received in that case that the retaining of a person in a particular place or the compelling him to go in a particular direction by force of an exterior will overpowering or suppressing in any way his own voluntary action, is an imprisonment on the part of him who exercises the exterior will. That the Police Superintendent by his letter enforced as it was by two constables put that stress upon the plaintiff's will there exists no question."

Wrongful confinement for three or more days.

343. Whoever wrongfully confines any person for three days, or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Wrongful confinement for ten or more days.

344. Whoever wrongfully confines any person for ten days or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement of person for whose liberation a writ has been issued.

345. Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other Section of this Chapter.

Wrongful confinement in secret.

346. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined or to any public servant, or that the place of such confinement may not be known to or discovered by any such person

or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement.

Wrongful confinement for the purpose of extorting property or constraining to an illegal act.

347. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security, or of constraining the person confined or any person interested in such person to do any thing illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

"Offence" includes anything punishable under a local or special law (S. 40; Act XXVII, 1870, S. 2).

Wrongful confinement for the purpose of extorting confession or of compelling restoration of property.

348. Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

A thief, while in the custody of the Police, returned some of the stolen property to the prosecutor, who was afterwards tried for an offence under this Section and released, on the grounds that as the thief was legally arrested, the confinement could not be considered wrongful—*Queen* v. *Sumbhoonath Panday and another*, 1 W. R., Cr. R., 26.

"Offence" includes anything punishable under a local or special law, S. 2, Act XXVII, 1870.

OF CRIMINAL FORCE AND ASSAULT.

Force.

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change

of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling; provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:

First.—By his own bodily power;

Secondly.—By disposing any substance in such a manner that the motion, or change, or cessation of motion takes place without any further act on his part or on the part of any other person;

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

Criminal force.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear, or annoyance to the person to whom the force is used, is said to "use criminal force" to that other.

Illustrations.

(*a.*) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear, or annoyance to Z, A has used criminal force to Z.

(*b.*) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, A has used criminal force to Z.

(*c.*) Z is riding in a palanquin. A, intending to rob Z, seizes the pole, and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(*d.*) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z: he has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, he has used criminal force to Z.

(*e.*) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes, or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten, or annoy Z, he has used criminal force to Z.

(*f.*) A intentionally pulls up a woman's veil. Here A intentionally uses force to her; and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy her, he has used criminal force to her.

(*g.*) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally, by his own bodily power, causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling: A has therefore intentionally used force to Z, and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminalforce.

(*h.*) A incites a dog to spring upon Z without Z's consent. Here, if A intends to cause injury, fear, or annoyance to Z, he uses criminal force to Z.

Assault.

351. Whoever makes any gesture, or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit "an assault."

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(*a.*) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(*b.*) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(*c.*) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

"A large proportion of the acts which we have designed as assaults, will be offences falling under the head of hurt and restraint. Thus, a stab with a knife is an offence falling under the head of hurt, and is also an assault. The seizing a man by the collar, and thus preventing him from proceeding on his way, is unlawful restraint, and is also an assault. But there will be many assaults which it is absolutely necessary to punish, yet which cause neither bodily hurt nor unlawful restraint. A man who impertinently puts his arm round a lady's waist, who makes a severe stroke at a person with a horse whip, who maliciously throws a stone at a person, squirts dirty water over a person, or sets a dog at a person, may cause no hurt and no restraint." (P. C. Note M, 71).

Mere words do not amount to an assault, but words delivered under such circumstances as display a hostile intention to use criminal force, coupled with a present ability to carry out such intention, constitute an assault.

Punishment for assault or use of criminal force otherwise than on grave provocation.

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.

An information was laid against defendants before Justices for *common* assault, which was dismissed, and certificate of dismissal given under S. 27, 9 G. IV, C. 31. The prosecutor indicted defendants *of the same facts* for assault doing grievous bodily harm, &c., and lastly a common assault. Held, the certificate was a bar of *autre fois acquit* as the *facts* were the same, and it has been held in *Reg.* v. *Stanton*, 5 Cox Cr. C., 324, that a conviction for an assault followed by payment of fine or imprisonment is a bar to a felony, *viz.*, assault and wounding with intent to murder on the same facts, and so in *Reg.* v. *Walker*, 2 Moo. & Rob., 446, a plea of *autre fois convict* of an assault is a bar to an indictment for feloniously stabbing in the same transaction—*Reg.* v. *Elkington*, 9 Cox Cr. C., 89. So a person acquitted in a charge of criminal force, cannot be convicted for hurt on the same facts—*Kaplan* v. *Smith*, 4 W. R., Cr. R., 3.

Defendants were charged with counts for grievous bodily harm, cutting, stabbing, &c., and jury returned a verdict of common assault which chairman refused on the ground that common assault was not contained in counts charged. It was argued that one was included in the other. Held, the verdict should have been taken—*Reg.* v. *Yeadon and Birch*, 9 Cox Cr. C., 93. So under S. 457, Cr. Pro. Code, when a person is charged with an offence and part of the charge is not proved, but the part which is proved amounts to a different offence, he may be convicted of the offence which he is proved to have committed, though he was not charged with it. So if A is charged with murder, he may be convicted of culpable homicide, or of causing death by negligence. Illus. (*b*), S. 457.

A is tried for an assault and convicted. The person afterwards dies. A may be tried again for culpable homicide. (Illus. (*c*), S. 440, Cr. Pro. Code.)

A wrongfully strikes B with a cane. A may be separately charged with and convicted under Ss. 323 and 352, but cannot be sentenced to more than if convicted under 323 only. (Illus. (*i*), S. 453, Cr. Pro. Code.)

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this Section if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence: or

If the provocation is given by anything done in obedience to the law or by a public servant in the lawful exercise of the powers of such public servant: or

If the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

Assault or use of criminal force to deter a public servant from discharge of his duty.

353. Whoever assaults or causes criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Where the assault was committed on a constable whilst endeavouring to arrest accused on suspicion of having stolen the property he was carrying, the Counsel for the prosecution, in order to show that the constable was justified in arresting the accused, asked the constable "what did you know had been the prisoners previous character." The constable replied, "I knew him to be a very bad character," and was proceeding to mention previous convictions, when he was stopped as parol evidence of such convictions was inadmissible; but in answer to a question put by prosecuting Counsel said, he had seen accused before the Magistrates on one occasion. Held, that though the constable might be asked in chief as to the general character of the accused, he could not be asked in chief as to the grounds of his suspicion, and therefore the question and answer as to the grounds of the constable's suspicion were improperly admitted—*Reg.* v. *Tuberfield*, 11 L. T., 385.

Unlawful apprehension.—Defendant was using threatening language to a third person when a constable in plain clothes interfered. Defendant struck him. The constable went away, put on his uniform, and returning to defendant's house with three constables, forced the door to arrest defendant, who refused to surrender, and wounded one of them in the struggle. Held, the arrest was unlawful under English law, and defendant could not be convicted for wounding the constable with intent to prevent his lawful apprehension—*Reg.* v. *Marsden*, 18 L. T. R., 298. But under the Code there would be no right of private defence. See S. 99.

A collectorate peada, who had been deputed to keep the peace during a distraint, was assaulted when *on the road* to execute the order. Held, a conviction under this Section was good—*Queen* v. *Metho Mullah*, 13 W. R., Cr. R., 49.

Assault or use of criminal force to a woman with intent to outrage her modesty.

354. Whoever assaults or uses criminal force to any woman, intending to outrage, or knowing it to be likely that he will thereby outrage, her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force with intent to dishonor a person, otherwise than on grave provocation.

355. Whoever assaults or uses criminal force to any person, intending thereby to dishonor that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assaulting a Hindoo to deprive him of caste would come under this Section. (Commr.'s 2nd Rep., S. 266.)

Assault or criminal force in attempt to commit theft of property carried by a person.

356. Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attempt wrongfully to confine person.

357. Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand Rupees, or with both.

Assaulting or using criminal force on grave provocation.

358. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred Rupees, or with both.

Explanation.—The last Section is subject to the same explanation as Section 352.

OF KIDNAPPING, ABDUCTION, SLAVERY, AND FORCED LABOUR.

Kidnapping.

359. Kidnapping is of two kinds: kidnapping from British India, and kidnapping from lawful guardianship.

Kidnapping from British India.

360. Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from British India.

Kidnapping from lawful guardianship.

361. Whoever takes or entices any minor under fourteen years of age if a male, or under 16 years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.—The words "lawful guardian" in this Section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This Section does not extend to the act of any person who, in good faith, believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child unless such act is committed for an immoral or unlawful purpose.

Abduction.

362. Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

The doctrine expounded in *Reg.* v. *Timmins*, 8 Cox, 403 (see note on S. 363, p. 207), was confirmed in the case of *ex parte* Basford, 8 Cox, 405, in which a minor daugther left her father's house without any *adequate excuse.* Cockburn, C.J., ordered her to be delivered up to her father's holding.—"The cases go to this length that, though the father is entitled to the custody of his child up to 21 years of age, the Courts will not interfere summarily by writ of *habeas corpus* to withdraw the child from the custody in which she happens to be, if the child has arrived at the age of discretion at which she can exercise a choice. The question is what was the age at which the girl attained that discretion. He (Cockburn, C.J.) wholly repudiated as frought with the most dangerous consequences the doctrine that mental intellectual precocity would give her the right if the child had not arrived at the age of discretion which the law recognized, for that very precocity might be the thing of all others to lead a young girl into misery and danger. The Court must lay down a general rule as to the age when the minor might be left to freedom of choice. The legislature had thrown light on this subject by which the Court might be safely guided. The age of 16 had been pointed out as the age up to which the consent of a female child should not justify her withdrawal from her father's roof without its being considered a misdemeanour. The Court may safely act upon the rule that the age of 16 is that up to which a female child ought to be subject to parental control. Up to that period no encouragement was afforded by the law any more than by public opinion to induce a young woman to withdraw herself from the parental control. In the present case there was nothing to justify that withdrawal, and the result was that the Court would order that the girl be delivered up to her father." His Lordship then went on to add that, if the parties had been indicted, they would have been liable under 9 G. IV, C. 31, S. 20. This is a case under English law, but doubtless the same rule would be adopted in India.

Punishment for kidnapping.

363. Whoever kidnaps any person from British India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

That he, on or about ——, at ——, kidnapped A B, a female minor under 16 years of age, from the lawful guardianship of C D, &c. (8 W. R., Cr. L., 11, No. 776, 1867).

The charge should give the name of the lawful guardian, and state that the person kidnapped was a minor, or of unsound mind (2 W. R., Cr. L., 2, No. 28, 1865; 5 W. R., Cr. L., 1, No. 149, 1866). It need not state that the taking out of lawful guardianship was forcible. (5 W. R., Cr. L., 4, No. 211, 1866.)

Kidnapping from lawful guardianship can only be committed in respect to *minors* and persons of *unsound* mind, the taking or enticing of a grown up person by force or false promise from one portion of British territory to another, is not kidnapping. (P. C. Note M, 72; 8 W. R., Cr. L., 11, No. 776, 1867.)

Kidnapping and abducting from lawful guardianship are separate offences, and should be separately charged. (2 W. R., Cr. L., 3, No. 28, 1865.)

To support a conviction under this Section it is necessary to prove (1) a taking of a minor (2) out of the keeping of a lawful guardian, (3) without his consent, (4) and with a knowledge or reason to believe that the person taken was in the keeping of such guardian.

Taking.—This Section is somewhat more general in its wording than 9 G. IV, C. 31, S. 20, which limits the offence to *unlawfully* taking, and under that Act it is not necessary (as seen in *Reg* v *Timmins*, 8 Cox Cr. C., 403) to prove more than the mere act of taking, and it is not necessary to show that defendant assisted the escape from her father's roof by some active means such as opening a door or with personal violence—*Reg.* v. *Frazer*, 8 Cox Cr. C., 467. So it has been held that under this Section it is not necessary to prove that the taking was by force or fraud, nor would it be any defence if the minor was willing or even anxious to go—*Queen* v. *Bhunjee Aheir*, 2 W. R, Cr. R., 5; *Queen* v. *Sookee*, 7 W. R., Cr. R., 36. But if the going away is entirely voluntary on the part of the minor, there is no taking—*Queen* v. *Neela Bebee*, 10 W. R, Cr. R., 33.

Prisoner was proved to have met a minor by arrangement and stayed with her away from her father's house for three days, sleeping with her at night, that he took her away without the father's consent, in order to gratify his passions, and then allow her to return home; but not with a view of keeping her away from home permanently. Held sufficient to support a conviction under 9 G. IV, though she had remained out one night previously with him. Erle, C. J., said:—"The difficulty in the construction of the Statute is what is meant by taking a girl out of possession of her father. The taking a girl away might be consistent with the possession of the father if the girl goes away with the party intending to return in a short time; but when a person takes a girl away from the possession of her father and keeps her away against his will for such a length of time as in this case, keeping her from her home for three nights and cohabiting with her during that time, we think that the evidence justified the jury in finding that the prisoner took the girl out of the possession of the father and against his will within the meaning of the Statute. The prisoner took the girl away from under her father's roof and placed her in a situation quite inconsistent with the existence of the relation of father and daughter. Our judgment in this case is that there was evidence to justify the conviction, although the prisoner did not intend to keep her away from her home permanently, but when his lust was satisfied to cast her from him—*Reg.* v. *Timmins*, 8 Cox Cr. C., 403. So prisoner induced a girl under 16 to leave her father's house, and go with him and get married. She returned after an hour and continued to live with her father as before, who was ignorant of what had taken place. Held, there was sufficient evidence of taking though the marriage was never consummated, as the girl could not be said to be in the father's possession although she was in his house, because she was in the lawful possession of her husband, and the father could never have the custody of her in the same manner as before the marriage—*Reg.* v. *Baillie*, 8 Cox Cr. C., 238

Possession.—The meaning of "possession" in the English Act referred to above is somewhat similar to "keeping" in S. 361. In the case of *Reg.* v. *Maukabelow*, 6 Cox Cr. C., 143, Erle, J., held:—"But the taking must also be 'out of possession' of the parent or guardian, and the next question is what is the meaning of 'possession.' Now actual manual possession is clearly not necessary. It appears to us that the Statute is satisfied if, at the time of taking, the girl continues under *the care*, charge and control of the parent." So it has been held under this Section that a child playing on the public road near the house of its lawful guardian is in his keeping—*Queen* v. *Musst. Oozeerun*, 7 W. R., Cr R., 98. So that a minor remains in his keeping while going to visit a neighbour—*Queen* v. *Gooroodoss Rajbunsee*, 4 W. R., Cr. R., 7. But where a minor being ill-treated by her mother ran away from her father's house, and meeting defendant, a cooly agent on the road, agreed to go with him as a cooly,—it was held that the girl was not in the keeping of her father when the defendant met her, as she had abandoned him and ran away at the time—*Queen* v. *Gunder Singh*, 4 W. R., Cr. R., 6. The reason given in this case seems doubtful, and the decision might be supported on a stronger ground that the defendant had no knowledge or reason to believe that she was under her father's keeping. Thus in the case of *Reg.* v. *Hilbert*, 19 L. T R., 799, it appeared that prisoner met a girl under 16 years of age in the street of her

native town, where she was living with her parents, took her to Manchester, where he seduced her, and then after some hours' delay taking her back left her where he had first met her. There was no evidence to show that prisoner knew who the girl was or whether she had any parents living. It was held that prisoner was not guilty of any offence, as it could not be assumed that the prisoner knew or believed that the girl was under the charge of her parents or of any one else, and consequently there was no proof of a taking out of possession of her parents which was absolutely necessary. Bovill, C.J., said :—" In the present case there is no statement or finding as a fact that the prisoner knew or had reason to know or believe that the girl was under the care of her father or mother; certainly no statement that he knew she was under the care of her father as charged in the indictment. In such cases, as when a man has gone with a girl of the town, the circumstances may rebut the inference of such knowledge; but there may be other cases where from other circumstances such knowledge may be shown to exist. In this case therefore, in absence of any finding that the prisoner knew that the girl was under her father's care, we are of opinion that the conviction cannot be sustained. Our decision is in accordance with that of Martin, B., in *Reg.* v. *Green and Bates*. In that case the girl was under 14 years of age, and lived with her father. The prisoners saw her in a street near where her father lived, and induced her to go with them to a lonely house which was under repair, and one of them had intercouse with her, and kept her out all night. On next morning she was found crying, and charge was preferred. At the trial, Mr. Baron Martin said:—"There must be a taking out of the possession of the father. Here the prisoners picked up the girl in the streets, and for anything that appeared they might not have known that the girl had a father. The essence of the offence was the taking of the girl out of the possession of the father. The girl was not taken out of the possession of any one. The prisoners no doubt had done a very immoral act; but the question was whether they had committed an illegal act. The criminal law ought not to be strained to meet a case which did not come within it. The act of the prisoners was scandalous; but it was not a legal offence. He had told the grand jury so, and adviced them to throw out the file. He should direct the jury to acquit the prisoners. Under the present circumstances we are of opinion this conviction must be quashed."

It appears, if the offence is committed on a minor, &c., placed in temporary charge of a person by his legal guardian, the former is considered the person out of whose guardianship he is kidnapped. This question arose in the case of the *Queen* v. *Koordan Sing*, 3 W. R., Cr. R., 15, in which a minor, with the consent of her guardian, went to visit a friend, and whilst there was kidnapped. It was held that the lawful guardian for the *time* was the person in *whose* house she was residing. According to this decision it would appear that if a person becoming a temporary guardian consents to the taking away or enticing of a minor, neither the guilty kidnapper nor the yet more guilty temporary guardian would appear to be liable to punishment. The same point was raised before the Commissioners. (1st Rep., Ss. 342, 343.)

"A Hindoo girl of 6 or 7 years old was left for a few days by her father and another at the house of a relation. This relation, without the consent of either party, married the girl to a relation of his own, a man of 30 years old.

"It seems to us that such a case as this amounts to 'kidnapping from lawful custody,' as it might be alleged that the child had been conveyed out of the keeping of the lawful guardian under a consent obtained by deception or concealment as to the future treatment of the child for the purpose of injury to the child, that is, for the purpose of marrying her improperly. We conceive that the relative, who gave the child in marriage under the circumstances stated, would be liable under this law as a principal, and the man who married her as an abettor."

This point has been raised in English law in the case of *Hicks* v. *Gore*, 3 Mod. Rep., 84, where a mother placed her daughter in care of a lady to prevent her being run away with, and the lady collusively married her to her own son while she was under 16 years, the marriage being without entice-

ment and openly. Held, that the case was not within the penalties of 4 & 5 P. & M. for taking away a maiden under 16 from her parents. And in a more recent case, when a girl returning home at Christmas wished to live with her mother and step-father, and the mother refused, saying she must abide by a previous arrangement she had made, by which she was to live with her grandmothers. The girl went and lived with her uncle A instead of her grandmother, and her mother, on knowing this, wished her to come home to her; but she did not come. Afterwards B, another uncle, took her away and married her. B was indicted for alluring and detaining the girl, and that he took her out of possession of her mother with intent to marry her, and A for aiding and abetting. Held, the circumstances proved were not in fact sufficient for conviction—*Reg.* v. *Burrell*, 33 L. J., M. C., 54.

The evidence as to the age of the minor must be clear and decisive.

Consent may be either direct or implied, and is defined in Section 90 of the Code. The conduct of the guardian towards the minor is admissible. In a case under the English Act, *Reg.* v. *Frazer*, 8 Cox Cr. C., 44, it appeared that the girl had been in the habit of staying out late at night, and her conduct was generally bad, and that the father did not take proper care of her. Pollock, J., in charging the jury said, that he had, considerable doubt whether the Statute was intended to apply to a case where so much profligacy on both sides was shown; that a father was bound to take reasonable care of his child, and that his misconduct in regard to the management of his daughter caused a doubt whether she was really taken away against his will.

A person by falsely representing that he wished to place the girl in the service of a lady, induced the parents to let him take her away. Held, he was guilty—*Reg.* v. *Hopkins*, Car. & M., 244.

The evidence of the kidnapped minor, if trustworthy, is sufficient for conviction—*Queen* v. *Mussamut Oozeerun*, 7 W. R., Cr. R., 98.

Nearness of relationship is no ground of defence. So where the uncle of a minor took her out of the guardianship of her mother, he was convicted—*Queen* v. *Modhoo Paul*, 3 W. R., Cr. R., 9.

Separate sentences may be passed for offences under this Section and S. 372, as it does not follow that because a person entices away a minor from the keeping of her lawful guardian, that it is necessarily for the purpose of selling her for the purposes of prostitution—*Queen* v. *Doorga Dass*, 3 W. R., Cr. R., 37.

When the facts proved amounted to offences under Ss. 363 and 366, separate convictions and sentences could not be passed for each offence under the old Procedure—*Queen* v. *Isree Panday and others*, 7 W. R., Cr. R., 56. They can now.

Kidnapping or abducting in order to murder.

364. Whoever kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, shall be punished with transportation for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(*a.*) A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this Section.

(*b.*) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this Section.

Kidnapping or abducting with intent secretly and wrongfully to confine a person.

365. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting a woman to compel her marriage, &c.

366. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The name of the person, whom it was intended to have compelled the woman to marry, should be given in the charge—3 W. R., Cr. L., 9, No. 518, 1865.

If the woman kidnapped or abducted is a minor, her consent is immaterial—*Queen* v. *Amgad Bugeah*, 2 W. R., Cr. R., 61; but if she is not a minor, and capable of judging for herself, it must be shown that, at the time of her abduction, she had no intention of marriage or illicit intercourse. So when a procuress induced a married woman of 20 years of age to become a prostitute, and the facts showed that she made her deliberate choice to go to Calcutta and become a prostitute, the High Court held that the procuress could not be convicted under this Section, as the woman was not compelled to go, nor was she forced or seduced to illicit intercourse—*Queen* v. *Sreemotee Poddee*, 1 W. R., Cr. R., 45. But see S. 498.

It was held under the old Procedure Code that separate convictions and sentences on the same facts for offences under Ss. 363, 366, and 368 were illegal, and that the conviction should be on the gravest charge under S. 366—6 W. R., Cr. L., 2, No 555, 1866. They are now legal.

See note under S. 416.

Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.

367. Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Concealing or keeping in confinement a kidnapped person.

368. Whoever, knowing that any person has been kidnapped or has been abducted wrongfully, conceals or confines such person, shall be punished in the

same manner as if the offender had kidnapped or abducted such person with the same intention or knowledge or for the same purpose as that with or for which he conceals or detains such person in confinement.

It is necessary to prove that the accused knew that the person was kidnapped or abducted. Where A, formerly a servant of B, kidnapped C, and taking her to B's house, received a small sum in payment for her from B's wife. C told B who was aware that A had brought her, that she had no parents. Held, although from the connection of A with B's family, the latter must have doubted whether A had procured the girl honestly, yet the evidence was not sufficient to prove beyond all reasonable doubt that she had kidnapped her—*Queen* v. *Mirza Sikundur Bukht*, 3 N. W. R., 146.

"*Conceals.*"—The mere fact of a girl who was kidnapped, staying in the house of a person for a few days, does not warrant the conclusion that she was concealed by him. So where certain persons kidnapped A, and taking her to the house of B and C, kept her there a few days while negotiating her marriage with another party—held, a conviction under this Section could not be upheld, for the girl was not carefully kept out of sight of the people; and if they had known her antecedents, they could have had no reason to suppose that any search would have been made for her—*Queen* v. *Mussamut Chubbooa and others*, 5 N. W. R., 189. So where A, a kaharin, was kidnapped, and made over to B, in whose house she resided for 8 days. She was then made over to C, who sold her to D for 10 rupees. Subsequently E induced D to give her up to him and sold her to as a "raj pootin" to F in marriage. All were convicted under this Section for concealing. The High Court held that there was no evidence to show that any of the prisoners except B said or did anything calculated and designed to prevent her from being seen or found; and that the misrepresentations they made were for the purpose of obtaining money by disposal of her rather than for the purpose of concealing her, and hence they were probably guilty of cheating. But with regard to B they upheld the conviction, as it was shown that he had given her out to be his relative more or less publicly, at a time when he might have supposed a search was likely to be made for her, and that this was for the purpose of baffling and defeating any such search—*Queen* v. *Jhurrup, &c.*, 5 N. W. R., 133.

This Section refers to some party who assists in concealing a person who has been kidnapped or abducted, and not to the kidnappers—*Queen* v. *Sheik Oozeer*, 6 W. R., Cr. R., 17; *id.*, Cr. L., 2, No. 555, 1866.

It is not necessary to prove that the person confined was abducted by any particular person. If there is proof that abduction has been committed, and defendant knew of it, this is sufficient, although the particular persons charged with the abduction may have been acquitted—*Queen* v. *Ameer Daraz and another*, 4 W. R., Cr. R., 3.

A, knowing that B a female minor has been kidnapped, wrongfully confines her and detains her as a slave. A may be punished for offences under Ss. 368 (read with 347) and 370. (Illus., S. 454, Cr. Pro Code.)

A charge of wrongfully concealing a person, known to have been kidnapped, may be tried in the district where the concealing or the wrongful confinement took place. (Illus. (c), s. 66, Cr. Pro. Code.)

Kidnapping or abducting a child with intent to take property from the person of such child.

369. Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any moveable property from the person of such child, shall be punished

with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

In the *Queen* v. *Sohoy Dome*, 6 W. R., Cr. R., 2, defendant inveigled an infant child to an *aheer* at some short distance from home, and stole his ornaments. It was held that the act amounted to abduction for the purpose of stealing its ornaments.

A person convicted of the major offence under this Section cannot also be convicted on the same facts of the minor offence under S. 363—*Queen* v. *Shama Sheikh*, 8 W. R., Cr. R., 35. He can now.

Buying or disposing of any person as a slave.

370. Whoever imports, exports, removes, buys, sells, or disposes of any person as a slave, or accepts, receives, or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A kidnapped girl was brought to the house of B by an old servant and sold to B's wife. She was made a Massalmani, supplied with food and clothes; but got no wages, nor was she allowed to leave the house. After 4 years she escaped, and B was convicted under this Section. On appeal the High Court held:—"It was urged that to constitute a person a slave not only must liberty of action be denied him, but a right asserted to dispose of his life, his labour, and his property. It is true that a condition of absolute slavery would be so defined; but slavery is a condition which admits of degrees. A person is treated as a slave if another asserts an absolute right to restrain his personal liberty, and to dispose of his labour against his will, unless that right is conferred by law, as in the case of a parent, or guardian or jailor. It appears to us that the evidence shows that the appellant asserted a right to restrain the liberty of Mussamut Paigya and to dispose of her labour, and that she was detained in his house as a slave. Then it is urged that the child was received by appellant's wife, and not by himself. This is true, but she was subsequently detained in his house for a number of years, and the Sessions Judge was justified in holding that he, as master of the house, and the person benefited by her service, was responsible for her detention. Under these circumstances we shall not interfere with the conviction under S. 370—*Queen* v. *Mirza Sikundur Bukht*, 3 N. W. R., 147. See note under S. 368.

Habitual dealing in slaves.

371. Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Selling or letting to hire a minor for the purpose of prostitution.

372. Whoever sells, lets to hire or otherwise disposes of any minor under the age of sixteen years with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that

such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

"*Disposing*."—Where the evidence showed that A disposed of her two young daughters to B, a dancing girl to a Pagoda, for a neck ornament and Rs. 35; that B took them to the Pagoda to be marked as dancing girls; and that girls so sold and registered were brought up prostitutes, held, that A was guilty under this Section, and B under S. 373, as the transaction was one of disposing and obtaining within the meaning of these Sections—*Ex parte Pudmavati, Appellant*, 5 Mad. R., 415. So where A dedicated her adopted minor daughter to the service of a Hindu temple, and it was proved that girls so dedicated invariably lead a life of prostitution, and that A was well aware of it,—it was argued that the words "otherwise disposing of" meant disposing to some third person; that the girl was not alienated to a third person, but only dedicated to the temple; that as correlative to the words "whoever sells or lets to hire" in this Section are the words in S. 373 "whoever buys or hires;" and so the words "otherwise disposes of" are limited by the words "otherwise obtains possession of" in 373, and that A did not give up the child, but retained possession. It was held, that A was properly convicted, as she, when dedicating the child, knew it to be likely that she would be used for the purposes of prostitution; that it was not necessary to give up present possession, and that dedication was sufficient—*Reg.* v. *Jaili Bhâ vin*, 6 Bom. R., Cr. C., 61.

B, a married minor, living with her grandmother apart from her husband, carried on an intrigue with two Hindus, who persuaded B and her grandmother that B should become a prostitute. In consequence the grandmother and B made arrangements with a prostitute, and went to live in her house, where the prostitute received B's earnings, and in return supported B and her grandmother. Jackson (J.) held, that "as to the case of Noor Jan (the grandmother) it seems to me clear that she has not disposed of the person of her granddaughter. The girl appears to have acted entirely as a free agent upon the persuasion of the two Hindu men I have mentioned. Of her own choice, primarily for the purpose of the more conveniently carrying on the intrigue with them, but ultimately for her own ends, she leaves her house and goes to reside in another village. The conduct of the grandmother in consenting to, conniving at, and in some degree profiting by the arrangement is morally, no doubt, infamous; but it does not so far as I can see amount either to the offence of which she has been convicted, or any other offence under the Penal Code."

"As to Juggat Tara (the prostitute) in like manner it seems to me that neither of the offences of which she has been convicted is made out. She has not, I think, obtained possession of any minor, because as I have stated she met the girl accompanied her to her house, and acted entirely as a free agent. She certainly had not let her out for hire. That what she did was to receive the sums of money paid by the girl's visitors apparently in exchange for the board and lodging which she gave. That which S. 372 contemplates is the selling and letting to hire, or otherwise disposing of any minor with intent that such minor should be employed as stated, *i.e.*, making over to a person in either perpetuity or for a term or for a consideration, or otherwise transferring the possession of a minor. Nothing of the sort has taken place here. That which did happen is, I believe, a common arrangement enough, that is to say, that prostitutes, the younger women, live with a brothel-keeper and receive such visitors as she introduces, are fed and clothed by her, and allow her to receive the wages of their shame."

Glover (J.) dissenting, held:—"It appears to me that the words of the Section 'otherwise disposes of' cover her case. It is proved that she left her house at Amova, and proceeded to Bhanderea, for the express purpose of making her granddaughter a prostitute; that she afterwards went and lived with the girl at the

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house of a professional public woman, and allowed her granddaughter to follow the ways of the house and receive visitors. It appears to me that she did all this in furtherance of her original intention, and that when she thought her granddaughter sufficiently initiated in her new trade, she in company with Juggut Tara (the prostitute) took the girl to the Thannah to have her name entered on the list of public women. Noor Jan appears to me to have taken an active part throughout in this most shameful business, and it was by her own individual act that the girl went to Juggut Tara's, and lived there as a prostitute. I think she was properly convicted"—*Queen* v. *Noor Jan and Juggut Tara*, 14 W. R., Cr. R., 39; 6 Beng. L. R., App., 34. Considering that the girl was a minor, though unchaste, not a prostitute, that the grandmother was at least *de facto* the guardian, and that one of the objects of this Section is to protect the minor from the act of its guardian, it is somewhat difficult to uphold Jackson, J.'s opinion.

Defendants bought two girls (minors), and taking them to another district, palmed them off as women of a much higher caste, and gave them in marriage as such. The High Court held that the defendants were guilty of cheating, but not of an offence under this Section, which contemplates the prostitution of minors, or their being employed for any "unlawful and immoral purpose," whereas the misrepresentation was not "immoral"—*Queen* v. *Dabee Sing and others*, 7 W. R., Cr. R., 55.

Buying or obtaining possession of a minor for the purpose of prostitution, &c.

373. Whoever buys, hires or otherwise obtains possession of any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The leading case on this Section is the *Queen* v. *Shaik Ali*, 5 Mad. R., 473. In this case prisoner met Dowlath Bee, a girl of 11 years old, in a street at Triplicane, and promised to give her a pice if she would accompany him into an uninhabited house close by, and allow him to have sexual connexion with her. The girl went willingly, and both were detected in the act. It was proved that she had not attained puberty, and the evidence tended to show that the girl had not before had sexual intercourse. Prisoner was convicted under this Section, but on a case reserved the following points arose:—

1*st.*—Whether the buying, hiring or obtaining possession must be from a third person or may it be from the minor herself. On this there was a difference of opinion. Scotland (C.J.) held:—"It is not, I think, essential to the offence that the buying, hiring or other obtaining of the possession of the minor should be from a third person. The language of the Section is quite applicable to an agreement or understanding come to with the minor without the intervention of a third person, and the vice against which the Section is directed is certainly not of any less enormity in the latter case."

Holloway (J.) said:—"I think that even the construction of the bare words of the Section is in favour of the conclusion that there must be a transaction of which other parties are the subjects, and the minor the object. It is of course not to be denied that, in common discourse, we speak of a man or woman selling himself or letting himself to hire; but in counties, at all events, in which slavery is unknown, what is really sold or let is the labour or skill of the seller or letter. Here the language of the Section points to a

contractual or contract-like obligation—'Whoever by buying, hiring or other similar transaction obtains possession, &c.'

This construction, preferable on the mere words, is, I think, shown to be the only true one by the Sections which precede this. Ss. 361 and 363 provide an adequate punishment for taking or enticing out of the keeping of a lawful guardian, and the definition of this person renders the operation of the Sections very wide; Ss. 364, 365, 366, 367 and 369 provide for other offences of the same character. Then, by natural transition, S. 372 seeks to protect the minor from the act of the parent or guardian. After consideration I can entertain no doubt that person aimed at in S. 373 is the other party to the transaction in S. 372. The whole of the words point to something having the form of a contract. A minor is *ex vi termini* incapable of binding himself by one; but if S. 373 applies to him who without dealing with a third party obtains possession for the purpose or with the knowledge specified, then the minor is equally punishable under S. 372." In Bengal, it has been held that where a minor acts of her own free will, and accompanys the person hiring, &c., it does not amount to obtaining possession of her—*Reg.* v. *Noorjan and Jaggut Tura*, 6 Ben. R., App., 34.

2*ndly*. Meaning of obtaining possession—Scotland (C.J.). "But to bring a case within the Section, it is in my opinion essential to show that the possession of the minor has been obtained under a distinct arrangement come to between the parties that the minor's person should be for some time completely in the keeping and under the control and direction of the party having possession whether ostensibly for a proper purpose or not. The words 'buys' and 'hires' convey that meaning according to their ordinary acceptation, and giving them due effect, it seems to me that the associated words 'or otherwise obtains possession' were not intended to do more than include other modes of obtaining the same kind of possession as that of a buyer or hirer. This I think is shown more clearly to be the meaning intended by the provision which follows as to the other essential element of the offence—the intent or knowledge of its being likely 'that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose' indicating plainly as it does an employment or use of the minor at some time future to the obtaining possession. Its effect is to my mind strong to show that complete possession and control of the minor's person obtained by buying, hiring, or otherwise with the intent or knowledge, that by the effect of such possession or control the minor should or would afterwards be employed or used for either of the purposes stated, is what the Section was intended to make punishable as a crime. The provision seems to me to exclude the supposition that an obtaining possession in the sense in which that expression is, no doubt, sometimes used of merely having sexual connexion with a woman, could have been in the contemplation of the framers of the Section.

This construction of the first part of the Section when read by itself is, I think, rendered still more certain by the correlative terms of S. 372—'whoever sells, lets to hire, or otherwise disposes of any minor,' for there can be no doubt that they import a complete making over of the possession of the minor to the person buying or hiring.

It follows that the sexual intercourse proved in the present case is not in my opinion an obtaining possession of the girl by hiring within the meaning of the Section." Innes (J.) concurred, holding "possession" in the Section meant possession with a power of disposal, and that in that sense there was no evidence against the prisoner.

3*rdly*. "For the purpose of prostitution or for any immoral and unlawful purpose." Scotland (C.J.)—"I think it right to state that I incline to the opinion that the act was not an unlawful one. I am not aware of any existing law providing against such an act unless it rendered the prisoner liable to a civil action, in which case it would be unlawful by force of S. 43 of the Penal Code and by the operations of Ss. 90 and 44 amount to the offence of criminal force. But at present I am not prepared to hold that any civil action would lie against the prisoner.

With respect to the further point of the meaning of the words 'for the purpose of prostitution,' which it has been necessary to consider in deciding this case, I have a clear opinion. Acts of improper sexual intercourse are acts of prostitution in one strict sense of the term. But proof of more than that I think is required. The ordinary and commonly understood meaning of the word prostitution is the offering up of the person for promiscuous sexual intercourse with men, and that I think must be taken to be its meaning in this Section, there being nothing in the context opposed to it but rather the contrary. The words 'employed or used' strike me as confirmatory of that being the only meaning intended. If those words had been followed by the words 'as a prostitute,' no doubt could have arisen, and I see no indication that anything different was meant by the words 'for the purpose of prostitution.' Further it is a weighty consideration in support of this construction as well as of that given to the first part of the Section, that if not right there would be no stopping short of holding every man to be punishable under S. 373 who had sexual intercourse with a willing girl under the age of 16, capable of giving consent or kept her as his mistress or concubine, even although the girl had been a common prostitute before he associated with her. Such an effect could not have possibly been intended; obtaining a girl for the purpose of illicit intercourse with a man is made punishable by other Sections of the Code, and this Section I think was intended to prevent trafficking in the employment or use of minors as prostitutes or for a purpose both immoral and unlawful."

Innes, J.—"I think also that the mischief against which this Section is directed is a trafficking in the prostitution or other unlawful and immoral use of minors, and that it was not intended to make punishable the buying, hiring or otherwise obtaining possession for a single act of sexual intercourse with the person so obtaining possession."

Unlawful compulsory labor.

374. Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

OF RAPE.

Rape.

375. A man is said to commit "rape," who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:

First.—Against her will;

Secondly.—Without her consent;

Secondly.—Consent given under a misconception or by a person of unsound mind is not consent in the legal sense. So it would appear that connexion with an imbecile would amount to rape, contrary to the law of England, where it has been held, in case of alleged rape, where the only evidence was the fact of connexion and the imbecile state of the girl, and there was no appearance of force having been used; that there was no case to go to the jury—*Reg.* v. *Pressy*, 17 L. T. Rep., 679: but if by force and without her consent, as when she is imbecile and unable to give it, conviction is good—*Reg.* v. *Fletcher*, 8 Cox Cr. C., 133.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt;

"*Consent.*"—The consent must be a free consent, and not given under any misrepresentation or by a person of unsound mind. So if a woman submit from fear of injury, or under circumstances which render resistance impossible, she cannot be said to have consented—*Queen* v. *Akbur Kazee*, 1 W. R., Cr. R., 21. So in England where a medical man, to whom a girl of 14 years of age was sent for professional treatment, had criminal intercourse with her, and she made no resistance from a *bonâ fide* belief that the defendant, as he represented, was treating her medically,—held, the consent was given under a misrepresentation, and he was guilty of rape—*Reg.* v. *William Carr*, 4 Cox Cr. C., 223.

As imbeciles are unable to consent, connexion with them will amount to rape. This is contrary to the law of England, where it has been held there was nothing to go to the jury in a case of alleged rape, in which the evidence was to the fact of connexion and the imbecile state of the girl, but there was no appearance of force having been used—*Reg.* v. *Pressy*, 17 L. T. R., 679; but when force was used, and without her consent, as if she is an imbecile and cannot give it, the conviction is good—*Reg.* v. *Fletcher*, 8 Cox Cr. C., 138. When a person asked a girl to comply, and she refused; he made her drunk for the purpose of exciting her, and taking advantage of her state violated her; he was convicted of rape—*Reg.* v. *Camplin*, 1 Cox Cr. C., 220. Under the Code it would be the same if she had not been asked at first, since she could not consent when drunk.

In Scotland it has been held that in the case of *Reg.* v. *Charles Sweenie*, 8 Cox Cr. C., 223, that when a man went into bed with another person's wife and had connexion with her in her sleep, he was not guilty of rape. But he would under the Code, as the act was done without her consent.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is, or believes herself to be, lawfully married;

Fifthly.—With or without her consent, when she is under ten years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under ten years of age, is not rape.

Punishment for rape.

376. Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description, for a term which may extend to ten years, and shall also be liable to fine.

That he, on or about ——, at ——, committed rape upon the person of A B, and that he has, &c.—8 W. R., Cr. L., 5, No. 8, 1867.

By the law of England an infant under 14 years of age is considered incapable of committing a rape; but in India there is no such presumption unless the infant is under 7 years of age, and the question of physical capability is a matter to be proved in evidence. In the case of *Kureem Noorbae*

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v. *Meun Noorbae*, 2 N. A. R., 87, a boy of 10 years was convicted for rape by the Court of Session; but the Nizamut Adawlut, considering it unadvisable to admit his capability, viewed the matter only as an attempt.

The law of evidence regarding charges of rape does not appear to be the same in India as in England; evidence of the previous character for chastity of the party raped, her previous familiarity with the prisoner, her conduct at the time, and state after assault, and whether she complained or not, is admissible in both countries; but, while in England proof of the details of any complaint made by the party ravished is not admissible unless when elicited by cross-examination, here the details have been always received, and are properly admissible as corroborative evidence under S. 31, Act II, 1855 (Taylor, L. Ev., S. 519; Ros., 809; *Deen Dyal* v. *Bhyrub Chunder Telleet*, N. A. R., 1831, 35; *Government* v. *Mokhoo Ruffoogur and Bhekane Sing*, 2 N. A. R., 411; *Muhroo* v. *Jadoo*, N. A. R., 1829, 215; *Government* v. *Azezoo Rhaman*, 1 N. A. R., 1851, 521, &c.). So, under the Evidence Act, in a case of rape, the fact that shortly after the alleged rape she complained relating the crime, the circumstances under which and the terms under which the complaint was made are relevant; but the fact that without making a complaint she said she was raped, is not unless as a dying declaration under S. 32 of that Act or as corroborative proof under S. 154. (Illus., S. 8, Act I, 1872.)

The woman may be asked and proof given of whether she has had previous criminal intercourse with the prisoner or any other person, or whether she has been turned out by her husband for bad conduct—*Government* v. *Sheeboo Ghose*, 1 N. A. R., 1857, 286; *Government* v. *Aramee Mundul*, 2 N. A. R., 1853, 230; *Government* v. *Bykunt Gope*, *id.*, 39.

Whipping may be awarded as an additional punishment for a second offence. S. 4, Act VI, 1864.

See note under S. 511.

OF UNNATURAL OFFENCES.

Unnatural offences.

377. Whoever voluntarily has carnal intercourse against the order of nature, with any man, woman, or animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this Section.

Whipping can be awarded as under last Section.

CHAPTER XVII.

OF OFFENCES AGAINST PROPERTY.

Of Theft.

Theft.

378. Whoever intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.—A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which effects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

Where prisoner, by means of a pipe and stop-cock, burned off the gas belonging to a company before it came into the meter, and so consumed the gas, it was held that there was a sufficient severance of the gas in the entrance pipe to amount to a carrying away—*Reg.* v. *White*, 1 Dears & B. C. C. C., 203.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move every thing which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express, or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations.

(*a.*) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession, without Z's consent. Here, as soon as A has severed the tree, in order to such taking, he has committed theft.

(*b.*) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(*c.*) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(*d.*) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(*e.*) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith, and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(*f.*) A finds a ring belonging to Z on a table in the house which Z occupies. Here, the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(*g.*) A finds a ring lying on the high-road, not in the possession of any person. A by taking it commits no theft, though he may commit criminal misappropriation of property.

(*h.*) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding-place, and selling it when the loss is forgotten. Here A, at the time of first removing the ring, commits theft.

(*i.*) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(*j.*) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(*k.*) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he had borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(*l.*) A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(*m.*) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely of reading it and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(*n.*) A asks charity from Z's wife. She gives A money, food, and clothes, which A knows to belong to Z her husband. Here, it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

(*o.*) A is the paramour of Z's wife. She gives A valubale property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(*p.*) A in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here as A does not take dishonestly, he does not commit theft.

"*Value.*"—It is no part of the definition of theft that the property should have any assignable value, and theft may be committed with regard to anything over which a person can possess the right of property. Any abuse of the Section is guarded against by S 95, which removes from the category of offences acts of a trivial nature. So where A was convicted for stealing pods from a tree standing on Government waste ground, and the pods were almost valueless, it was held no offence under S. 95—*Reg.* v. *Kasya bin Ravji*, 5 Bom. R., 35. See note on S. 95.

Nor is it necessary to ascribe it to any person as owner; the person concerned is the possessor—the person from whose actual possession the property is taken—and theft may be committed by a person against property, although the actual owner of it is unknown. Under the English law of larceny, in which the question of ownership is involved a sole owner is not guilty of theft unless he takes and carries away property with a design to despoil the person having lawful possession of it of all his interest therein by reason of such possession, and a joint proprietor cannot commit theft except under certain special laws. But under this definition, as the ownership does not come into question, it requires no straining of the law to bring within the definition the case of a sole owner who takes property dishonestly out of the possession of the person in actual possession of it, and cases in which one or two or more joint proprietors dishonestly take the common property out of the possession of the other or others, intending to appropriate it to his or their own sole use, or sell it and appropriate the whole price (Commrs.' 1st Rep., Ss. 479, 489, 490, 493; Illus. (*j*), S. 379). In a recent case one of the Judges of the High Court held that "S. 378 does not include under the offence of theft the case where one joint proprietor takes into his sole possession property belonging to himself and his co-proprietors which had previously been in their joint possession"—*Kuamuddin* v. *Allah Bukhsh*, 6 Beng. R., App., 133. The other Judge gave no opinion on this point, and looking at the Code there can be little doubt that if taken with dishonest intent the joint possessor would be guilty.

"*Possession.*"—This is defined to be "the state of owning or having a thing in one's own hands or power the thing possessed." (Wharton, L., Lex., 738.) The Code does not describe the circumstances which constitute possession, but has left it to be decided as a question of fact in each particular case. It is however, clear, that making away with property in some cases cannot amount to theft. Thus, property taken dishonestly by a person during the interval between the death of the person in possession and when it comes into the possession of some person authorized to take charge of it; or the pillage of property by a carrier who has charge of it, can only be charged as criminal misappropriation.

It has been decided that fish in a portion of a navigable river are not in the possession of the person possessing the jalkar rights—*Hurr Mote Mohoroll* v. *Dino Nath Mulo*, 19 W. R., Cr. R., 47.

By S. 22, property in possession of a person's wife, clerk, or servant for that person is considered to be in his possession. This Section apparently does not apply to cases where the wife, clerk, or servant obtained possession for a person, but only to cases in which the person has obtained actual possession and made it over to the wife, clerk, or servant. Thus, in the case of the *Queen* v. *Bharut Chunder*, 1 W. R., Cr. R., 2, defendant, a constable, was sent to take possession of *lawaris* property, and after taking possession of it made away with it, the High Court held that he was only guilty of criminal misappropriation, as he obtained lawful possession of the property in the first instance; and in the case of the *Queen* v. *Kyalee Sing and others*, 2 W. R., Cr. R., 54, defendant, who made away with property over which he was keeping guard as a burkundaz, was considered to be guilty of theft. So also it has been held by the Nizamut Adawlut, before the passing of this Code, that the clandestine removal by a servant from his employer's residence of property placed under his custody by his employer with the intent of appropriating such property to himself is theft. But if the servant appropriates it without removing it from the premises of his employer, the offence amounts to embezzlement only—*Surroop Chunder Nundee* v. *Sheik Amoo and others*, N. A. R., 1840, 165. So if a servant removes and disposes of his master's property, he is guilty of theft, but if he pledges property with his master's sanction, and then makes away with the money, it is only embezzlement—*Government* v. *Ramkisto Sircar*, 1 N. A. R., 1854, 176.

In practice very little difficulty can arise in cases in which the circumstances leave a doubt as to whether the offence committed amounts to theft or criminal misappropriation, as in such cases the Court trying the defendants can frame separate charges on the same facts, charging the defendant of theft and criminal misappropriation and, recording an alternative finding, sentence him under S. 72; and even if this procedure be not adopted, and the accused is wrongly convicted of theft, when the offence committed only amounts to criminal misappropriation, the error would not justify a setting aside of the sentence. (Cr. Pro. Code, Ss. 423, 424, 425.)

By Illustration (*o*), if A, a paramour of Z's wife, takes property, he is guilty of theft. But if A is not the paramour of Z's wife? The law in England on this point was laid down in *Reg.* v. *Avery and another*, 8 Cox Cr. C., 186. Where persons, relatives of the wife, assisted her in packing and removing her husband's goods, the wife intending to leave the husband's dwelling and not intending to return to it,—the jury found prisoners took the goods without the knowledge or consent of the husband, but with the intent of depriving him of the property in them. Prisoners were convicted; but the conviction was set aside. Cockburn (C.J.) held—"We are of opinion that the conviction in this case cannot be sustained. It is clear in the finding of the jury that no adultery took place between the prosecutor's wife and either of the prisoners, or was intended, and it is not found that there was any intention on the part of the prisoners when she abandonded her husband's dwelling to commit a felony. The goods were taken away with the privity of the wife when she abandoned her husband's dwelling. It is not necessary for us to lay down as law that supposing a stranger stole the goods of the husband, and the wife was privy to it, and consenting such privity and consent would, if there was *animus furandi* in the stranger, exonerate him from what would be otherwise larceny. But in deciding that this conviction should be quashed, we do not intend to say that we adopt that conclusion. We take this however to be clear that a wife cannot commit larceny by taking the goods of her husband, and if a stranger does no more than merely assist her in the taking, inasmuch as a principal cannot be guilty of larceny, so neither can the stranger as accessory be guilty."

There is a great difference between the English and Indian law, under which husband and wife may possess separate property. Here there is not that

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identity of interest as has come down under English law. So it has been held that a Muhammadan woman may be convicted of theft or abetment in respect of the exclusive property of her husband—*Reg.* v. *Khatabhai*, 6 Bom. R., Cr. Ca., 96; *Reg.* v. *Gobindás Huridás*, *id.*, 76; but a Hindu woman or any person assisting her cannot be convicted in Bombay for taking away her own pallá or stridhán over which her ownership is undoubted—*Reg.* v. *Natha Kalyán*, *&c.*, 8 Bom. R., Cr. Ca., 11.

Two persons were tried—the first for adultery, enticing away a married woman and theft of her husband's property; the second prisoner for abetment of the enticing and theft. The case for the prosecution was that the prosecutor's wife left her husband in company of the first prisoner, and that, previous to her departure, she opened the room where the family jewels and money were kept, and removed them by means of false keys supplied by the second prisoner, and that the jewels were deposited with the second prisoner for custody, and part of the money handed over to the first prisoner. The first prisoner was acquitted of adultery and of enticing with that intent. The Session Judge was of opinion that unless adultery or intent to commit adultery there could be no theft, and they were entitled to their discharge; but the High Court held that they must be tried as it was still open to jury to find that the prisoners were present and dishonestly removed or took part in the removal of the husband's property—5 Mad. R., App., 22.

Taking all these decisions, and Explanation 3, S. 108, which declares that it is not necessary that the person abetted should be capable of committing an offence, it would appear as if A in the above illustration would be guilty of theft whether he was Z's wife's paramour or not, and so would a person assisting the wife under similar circumstances.

"*Dishonestly*."—Defendants prevented the complainants from proceeding in certain direction with their carts, and knocked a couple of bales of salt off the carts, in order to oblige the complainants to pay a certain sum in the shape of tolls. It was held that the defendants could not be convicted of stealing the salt, as their intention was not to dishonestly take it out of complainant's possession, but to compel them to pay tolls—*Jowahir Shah* v. *Greedhare Chowdhry and others*, 10 W. R., Cr. R., 35. Seizure and removal under legal process, albeit in an irregular manner of property already attached under a prior legal process, does not amount to theft—*Reg.* v. *Magniram Vuchraj*,—Bom. H. C., 15th Oct., 1873. See S. 24 and note.

"*Without consent*."—See notes on Ss. 90, 374, 300.

Punishment for theft.

379. Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Charge.—That you, on or about the ——, day of ——, at ——, committed theft, and thereby committed an offence punishable under S. 379 of the Indian Penal Code, and within the cognizance of the Court of Session. (Schedule III, Cr. Pro. Code.) The charge need not set out the manner in which the theft was effected. (Illus., S. 441, Cr. Pro. Code; Illus., S. 439, *id.*).

Possession of stolen goods soon after the theft raises the presumption that the possessor is either the thief or has received the goods knowing them to be stolen—*Queen* v. *Jogeshar Bagdee and others*, 7 W. R., Cr. R., 169 (Illus., S. 114, Act I, 1872). A accused of theft is seen to give stolen property to B, who is seen to give it to A's wife. B says as he delivers it: "A says you are to hide this." B's statement is relevant as explanatory of a fact which is part of the transaction. (Illus., S. 9, Act I, 1872.)

Trial.—A is accused of theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and tried for the theft, and causing grievous hurt. (Illus., S. 452, Cr. Pro. Code.)

A and B are both charged with theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge, charging both with one theft, and B alone with the other two thefts. (Illus., S. 458, Cr. Pro. Code.)

A steals a buffalo from B in District W, and personally, or by his agents, conveys the buffalo through Districts X and Y into District Z. This is a continuing offence, and A may be tried in either W, X, Y or Z. (Illus., S. 67, Cr. Pro. Code.)

Conviction.—A person accused of theft may be convicted of criminal breach of trust or cheating, &c., and *vice versâ*. (Ss. 455, 456, Cr. Pro. Code.)

A person convicted of theft by a Magistrate of the second class may be subsequently charged with and convicted for robbery on the same facts which was not cognizable by such an offence. (Illus., S. 460, Cr. Pro. Code.) A person cannot be sentenced for theft and for dishonestly receiving the property to a greater amount than for either—*Queen* v. *Sheik Muddun Ali*, 1 W. R., Cr. R., 27; 1 W. R., Cr. Cir., 2, No. 16, 1864. So though a person who wrongfully kills a buffalo worth 60 rupees beloning to B, and then takes away the carcass in a manner amounting to theft, may be charged and convicted of offences under Ss. 429 and 379, yet he cannot be sentenced to more punishment than if he had been convicted under S. 429 only. (Illus., S. 454, Cr. Pro. Code.)

Where the theft and mischief are covered exactly by one set of facts it is the same. Thus A commits mischief by cutting down a tree in a Government forest, he also commits theft if he has cut it with the intention of taking it away. A does take it away. He may be convicted of theft and mischief, but not sentenced to more than for theft alone. (Illus. (i), S. 454, Cr. Pro. Code.)

Under the old Procedure Code conviction for theft was bad if the circumstances amount to an offence under Ss. 458, 459; but now the conviction would be legal, but the amount of punishment would be limited as above. (See Illus. (*n*), S. 454, Cr. Pro. Code.)

When the accused stole property at night belonging to two different persons from the same room of a house,—held there was only one act of house-breaking—*Queen* v. *Sheikh Moneah*, 11 W. R., Cr. R., 38.

Theft in a building, tent, or vessel.

380. Whoever commits theft in a building, tent, or vessel, which building, tent, or vessel is used as a human dwelling or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

The charge should state that the theft was committed in a building used as a human dwelling, or for the custody of property—5 W. R., Cr. L., 10, No. 349, 1866.

Under the old Procedure Code if the facts proved in evidence showed that house-trespass, or lurking house-trespass, or house-breaking accompanied by theft had been committed, the conviction should be recorded under Ss. 451, 454, or 457 respectively, and not under this Section—1 W. R., Cr. L., 2, No. 926, 1864; *Queen* v. *Tonakoch*, 2 W. R., Cr. R., 63; *Queen* v. *Chytun Bowra and others*, 5 W. R., Cr. R., 49; but under the new Code separate convictions are allowable, but the sum of the punishment cannot be greater than that for the greater offence.

Offences under this and last Sections may be punished with whipping in lieu of other punishment, and may be punished with whipping in addition on a second conviction. (Ss. 2, 3, Act VI, 1864.)

Theft by clerk or servant of property in possession of master.

381. Whoever being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

"That he, on or about ——, at ——, being a servant of A B, committed theft by stealing property in the possession of his master," &c.—2 W. R., Cr. L., 15, No. 203, 1865.

A hired boatman is not a clerk or servant—*Queen* v. *Bawool Manjee*, 8 W. R., Cr. R., 32.

Prisoners were charged with having stolen a sum of money shut up in a box and placed in the Police Treasury buildings over which they, as burkandazes, were placed on guard. Held, that should have been made under this Section for theft as a servant and not under S. 409 for criminal breach of trust as a public servant—*Queen* v. *Juggernath Singh*, 2 W. R., Cr. R., 55.

The terms "clerk" and "servant" have not been defined by the Code, and no doubt, as in England, a vast amount of discussion will arise in striving to arrive at their meanings.

By the law of England, embezzlement by a clerk or servant in that capacity is a distinct offence, and it has been held that the act providing for this separate offence is intended to apply to persons in the ordinary situations of clerks or servants, and having masters to whom they are accountable for the discharge of the duties of their situations. It extends to female servants, apprentices, travellers, persons employed by overseers, an extra collector of poor rates, a solicitor employed as a land agent to a Railway Company, a clerk of a Savings Bank, an agricultural labourer employed as a bailiff, the secretary of a Money Club, a commercial traveller, a secretary and member of a Friendly Society, and a collector of a manufacturing firm with a percentage on profits.

Neither the nature of the wages nor the duration of the employment is material. So where the prosecutor, having agreed to let the defendant carry out parcels when he had nothing else to do for which the prosecutor was to pay him what he pleased, gave him an order to receive £2, which he received and made away with, he was held to be a servant. (Burns, vol. iii, 257.)

The instances in which persons have been held not to be clerks or servants in that capacity form a no less formidable number.

Thus a man who is in no respect under the control of the person by whom he is in a single instance only requested to receive money is not within the Act. A mere agent is not a clerk or servant. Nor is a person who receives money for another without remuneration. So where a committee appointed several persons of the committee to sell excursion tickets, and prisoner, one of them, sold some tickets and appropriated the money (he received no remuneration for his services), he was held not to be a clerk or servant. So where there is no control, as where a person is employed to get orders for goods and to receive payment for them, but who is at liberty to get orders and receive payment where and when he thinks fit, and dispose of them as he thinks proper, being paid by a commission on the things sold, he is not a clerk or servant.

A driver of a coach hired for the day is not the servant of the party hiring it so as to bring him within the Act. An under-bailiff of a county court is not the servant of the high bailiff to pay over money due to the Registrar. But a servant in the employ of A and B is the servant of each, and when a traveller for several houses is employed to receive money, he is considered the individual servant of each. (Burns, 258, 9.)

A prisoner lived in the house of the prosecutor and acted as nurse to his sick daughter, having board and lodging and occasional presents for her services, but no wages. Prosecutor's wife gave the prisoner money to pay a coal bill, which money the prisoner kept, and brought back a forged receipt on the coal bill. Held, the prisoner was not a servant; but that this was larceny of the money—*Reg.* v. *Frances Smith*, 1 Car. & K., 423.

Theft after preparation made for causing death or hurt in order to the committing of the theft.

382. Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taking by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(*a.*) A commits theft on property in Z's possession; and, while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this Section.

(*b.*) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this Section.

Charge.—That you, on or about the —— day of ——, committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under S. 382 of the Indian Penal Code, and within the cognizance of the Court of Session, or

That you, on or about the —— day of ——, at ——, committed theft, having made preparation of causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable in S. 382 of the Indian Penal Code, and within the cognizance of the Court of Session, or

That you, on or about the —— day of, —— at, —— committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of the property taking by such theft, and thereby committed an offence under S. 382 of the Indian Penal Code, and within the cognizance of the Court of Session. (Schedule III, Cr. Pro. Code.)

If hurt is actually caused when a theft is committed, the offence is punishable as robbery, and not under this Section—*Queen* v. *Hushrut Sheikh*, 6 W. R., Cr. R., 85.

Offences under this and last Section may be punished with whipping in lieu of other punishment, and sometimes it may be given as an additional punishment. (Ss. 2, 3, Act VI, 1864.)

OF EXTORTION.

Extortion.

383. Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or

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sealed which may be converted into a valuable security, commits "extortion."

Illustrations.

(*a.*) A threatens to publish a defamatory libel concerning Z, unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(*b.*) A threatens Z that he will keep Z's child in wrongful confinement unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(*c.*) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(*d.*) A by putting Z in fear of grievous hurt dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

The effect of this Section, read with Ss. 24, 43 and 44, is, whoever puts any person in fear of injury to be caused to that person by anything which is an offence, which is prohibited by law, or which forms a ground for a civil action, and thereby, with the intent of obtaining unlawful gain or causing wrongful loss, induces the person so put in fear to deliver the things specified in the Section, is guilty of extortion. So where defendant, a junior vakeel, was instructed by his senior to apply for an adjournment, but not doing so, took a bond from his client under a threat of not rendering service as a vakeel, it was held that this did not amount to extortion, as this threat was not an offence, nor would it give rise to a civil action, as the vakeel was not bound by any contract to conduct the suit alone. (5 Mad. R., 14.)

The terror of a criminal charge is a fear of injury within the Section, whether the charge is true or false. So where a constable released some prisoners from custody for Rs. 30, he was found guilty of extortion—*Queen* v. *Mobaruck and others*, 7 W. R., Cr. R., 28. Moreover, since the guilt or innocence of the party threatened is immaterial, no evidence on the point seems admissible—*Reg.* v. *Cracknell*, 10 Cox Cr. C., 408.

"Injury" includes "injury to property." So when A got money from B under a threat, that if B did not give, he would lose his situation, it was held sufficient—*Meer Abbas Ali, Petitioner*, 18 W. R., Cr. R., 17.

Delivery by the person put in fear is necessary. Hence, if persons through fear of injury offer no opposition to the taking of property out of their possession, but do not deliver it up, the persons taking it are not guilty of extortion, but robbery—*Queen* v. *Duleelooddeen Sheik and another*, 5 W. R., Cr. R., 19.

But it is not necessary that the threat should be used, and the property received by one and the same individual; nor that the receiver be charged with abetment, though that might be done—*Reg.* v. *Shonkar Bhogvatelal*, 2 Bom. R., 417.

The mere fact that a person after being put in fear of injury delivers up property, does not amount to extortion. The delivery must be a consequence of the fear of injury, and it will be a matter of fact to be decided in each case, whether the injury threatened was likely to produce the effect intended, and whether, under the circumstances, the party was really put in fear, believing the injury to be unavoidable if he did not comply (Commrs.' 1st Rep., S. 517). So where a constable, who was entrusted with a purwana to obtain some information as to rates, under cover of it gave out that certain persons were taxed some small sums of money, and they believing him paid the amounts, the High Court held, that as the money was paid more through credulity than in consequence of any personal fear, the offence did not amount to extortion, but to cheating—*Queen* v. *Meajan and another*, 4 W. R., Cr. R., 5.

Where a chowkeedar obtained money from a person, but it was doubtful whether the money was obtained by fraudulent inducement, dishonesty or by putting him in fear of injury,—held, he was punishable for extortion or cheating—*Queen* v. *Ram Narain Chowkeedar*, 3 W. R., Cr. R., 32.

The inducement to deliver the property must be a dishonest inducement. So a conviction for extortion was set aside when it did not appear from the evidence that the property delivered was obtained dishonestly by the prisoner, who might have demanded it believing in good faith that he was entitled to it—*Reg.* v. *Abdul Kadir*, 3 Bom. R., Cr. Ca., 45. See as to "dishonestly" notes on Ss. 24, 380.

Punishment for extortion.

384. Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Charge.—That you, on or about the —— day of ——, at ——, committed extortion, an offenc epunishable under S. 384 of the Indian Penal Code, and within the cognizance of the Court of Session. (Illus. (*c*), S. 439, Cr. Pro. Code.)

A is put in fear of injury in District X, and is thereby induced in the District of Y to deliver property to the person who put him in fear. The offence may be tried in either district. (Illus. S. 65, Cr. Pro. Code.)

Putting person in fear of injury in order to commit extortion.

385. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Extortion by putting person in fear of death or grievous hurt.

386. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Putting person in fear of death or of grievous hurt in order to commit extortion.

387. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

The feigning of an attempt to commit suicide in order to extort money, is an offence under this Section—*Reg.* v. *Gregory*, 1 I. J., N. S., 423.

Extortion by threat of accusation of an offence punishable with death or transportation, &c.

388. Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death or with transportation for life, or with imprisonment for a term which may extend to ten years, or of having attempted

to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine ; and if the offence be one punishable under Section 377 of this Code, may be punished with transportation for life.

The charge should mention the offence, punishable with death, &c., by which the persons accused tried to extort the property—5 W. R., Cr. L., 4, No. 225, 1865.

This Section covers offences described in the 24 & 25 Vic., c. 96, ss. 46, 47, and the decisions under these Sections may serve as a guide in determining similar points under the Indian law. It has been held that the accusation referred to need not be an accusation before a judicial tribunal; an accusation before any other third person is sufficient—*Reg.* v. *Robinson*, 2 Moo. C. C., 14: that if the extortion is committed by a threat, it must be a threat to accuse, or an accusation; and that a threat to procure witnesses in support of a charge for which the prosecutor is in custody does not fall within the Statute—*Reg.* v. *Gile*, 1 Arch., P. A., 302. Further that the guilt or innocence of the party of the offence of which he is threatened is immaterial and no evidence on the point is admissible—*Reg.* v. *Cracknell*, 10 Cox Cr. C., 408.

"Offence" includes anything punishable under a local or special law. (S. 40, S. 2, Act XXVII, 1870.)

Whipping may be awarded in lieu of other punishment, and as an additional punishment on a second conviction. (Ss. 3, 4, Act VI, 1864.)

Putting person in fear of accusation of offence in order to commit extortion.

389. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed or attempted to commit an offence punishable with death or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine ; and if the offence be one punishable under Section 377 of this Code, may be punished with transportation for life.

"Offence" includes anything punishable under a local or special law. (S. 40, S. 2, Act XXVII, 1870.)

Whipping may be awarded under this Section in lieu of other punishment and also as an additional punishment on a second conviction. (Ss. 2 and 3, Act VI, 1864.)

OF ROBBERY AND DACOITY.

Robbery.

390. In all robbery there is either theft or extortion.

When Theft is robbery.

Theft is "robbery," if, in order to the committing of the theft, or in committing the theft, or in carrying away or at-

tempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or of instant wrongful restraint.

When extortion is robbery.

Extortion is "robbery," if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations.

(*a.*) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(*b.*) A meets Z on the high road, shews a pistol, and demands Z's purse. Z in consequence surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(*c.*) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z in consequence delivers his purse. Here, A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(*d.*) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

"There can be no case of robbery which does not fall within the definition of either theft or extortion. But in practice it will perpetually be a matter of doubt whether a particular act of robbery was a theft or an extortion. A seizes Z, threatens to murder him unless he delivers all his property, and begins to pull off all his ornaments, Z, in terror, begs that A will take all he has and spare his life, assists in taking off his ornaments and delivers them to A. Here such ornaments as A will take without Z's consent, are taken by theft. Those which Z delivered up from fear of death are acquired by extortion. It is by no means improbable that Z's right arm bracelet may have been obtained by theft and the left arm bracelet by extortion; that the rupees in Z's girdle have been obtained by theft and those in his turban by extortion." (P. C. Note N., 79). Several persons stopped a boat, saying it was required by the Magistrate of Rampore Beauleah, and then plundered it without any opposition from the boatmen. The High Court held they were guilty of robbery, as the theft was committed when the boatmen were under fear of wrongful restraint—*Queen* v. *Daleelooddeen and others*, 5 W. R., Cr. R., 19. See note on S. 383.

Hurt caused in snatching away an ornament is sufficient to bring the offence within the definition of robbery. So where a person, in snatching a nose-ring, wounded the owner in the nostril and caused blood to flow, he was convicted of robbery—*Queen* v. *Teckai Bheer*, 5 W. R., Cr. R., 95.

Under English law the violence must precede the theft or extortion in order to bring the case within the definition of robbery. It is not so under the Code, and if hurt be caused in carrying or attempting to carry away the property *for that end*, it is sufficient. This point arose in the case of the *Queen* v. *Ruhman Khan and others*, 3 W. R., Cr. R., 14, in which prosecutor followed the defendants who committed a theft, and one of them turning round gave her a blow of a stick. Defendants were convicted of robbery in the lower Court, but the Judges of the High Court were divided in opinion as to whether the hurt was caused in the words of the Section "for that end," and consequently whether robbery had been commited or not.

Offences defined in this Section and S. 391 are on a second conviction punishable by whipping as an additional punishment. (S. 4, Act VI, 1864.)

Dacoity.

391. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt amount to five or more, every person so committing, attempting, or aiding is said to commit dacoity.

To constitute dacoity it is necessary that at least five persons should conjointly *commit* or *attempt* to commit a robbery. It appears the offence of robbery must be complete, or some overt acts must have been committed, plainly manifesting the intention of robbery, as S. 402 provides for the punishment of persons assembled for the purpose of committing a dacoity. So where five persons commited robbery, and it was shewn that four of them considered that the fifth defendant had a fair claim to the property taken, the offence did not amount to dacoity—*Queen* v. *Bonomally Ghose*, 2 W. Cr. R., 114. So also a person found guilty of attempting to commit dacoity should be convicted of dacoity, and not of an attempt under S. 511—*Queen* v. *Koonee*, 7 W. R., Cr. R., 48; 8 W. R., Cr. L., 7, No. 737, 1867. But in another decision the High Court has stated that, unless the property is carried off, dacoity is not committed—9 W. R., Cr. L., 5, No. 361, 1868.

It is not absolutely necessary that force should be used in order to change a theft into a dacoity. If the number of persons engaged, or the manner in which they are armed, is ordinarily sufficient to cause fear of hurt, or wrongful restraint, that is sufficient—5 W. R., Cr. L., 3, No. 342, 1865. So where several people attacked a house and took away property, but the inmates obtaining information beforehand fled before the attack, the High Court held that the fact of the inmates running away was sufficient proof of the fear of hurt or wrongful restraint, and that defendants were guilty of dacoity—*Queen* v. *Kissoree Pater and others*, 7 W. R., Cr. R., 35. Five men armed were discovered committing an act of house-breaking by night. One of the parties was engaged cutting a hole through the wall while the others stood guard. When the alarm was given, the villagers ran up, and one of the robbers cut down a villager. Held, not dacoity but house-breaking by night—*Reg.* v. *Rewat Rajar*, W. R., 186, Cr. R., 39.

Where persons are found in possession of property obtained by dacoity within six hours after the event, the presumption is that they were participators in the dacoity—*Queen* v. *Cassy Mal and Gree Churn Mal*, 3 W. R., Cr. R., 10.

In the case of the *Queen* v. *Motee Jolaha*, 5 W. R., Cr. R., 66, defendant was found in possession of stolen property eight days after the dacoity. The High Court held there was as good ground to charge him with dacoity as having received stolen property.

For whipping see under last Section.

Punishment for robbery.

392. Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine, and if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

Charge.—That you, on or about the —— day of ——, at ——, committed robbery, an offence punishable under S. 392 of the Indian Penal Code, and within the cognizance of the Court of Session. (Schedule III, Cr. Pro. Code.)

A charge for robbery under the latter clause should contain the words "on the highway, &c."—1 W. R., Cr. L., 11, No. 1099, 1864.

A and B are accused of a robbery in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging them both with robbery, and A alone with murder. (Illus. 458, Cr. Pro. Code.)

In a trial whether A robbed B, the facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it to third persons, are relevant (Illus. S. 7, Act I, 1872); so if after the robbery C said in A's presence "the Police are coming to look for the man who robbed B," and that immediately afterwards A ran away, proof of these facts is admissible. (Illus. S. 8, *id.*)

When a person is tried on a charge of murder and acquitted, there was no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed. A may be afterwards tried for robbery. (Illus. S. 460, Cr. Pro. Code.)

A robs B, and in doing so voluntarily causes grievous hurt to him. A may be separately charged with, and convicted of, offences under Ss. 323, 392, 394; but the Court cannot inflict a greater sentence than if he had been convicted under S. 392 or 394 only. (Illus., S. 454, Cr. Pro. Code.)

Attempt to commit robbery.

393. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Offences defined under this Section and S. 394 are punished with whipping in addition on a second conviction. (S. 4, Act VI, 1864.)

Voluntarily causing hurt in committing robbery.

394. If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Where hurt is caused in the commission of a theft, the causing hurt changes the theft into robbery, and the charge should be laid under this Section for causing hurt in the commission of a robbery—2 W. R., Cr. L., 6, No. 42, 1865.

Under the old Procedure Code, it was held that this Section includes robbery as well as voluntarily causing hurt, and that when the two offences are committed together, the conviction should be under this Section, and a conviction under S. 392 is bad—*Queen* v. *Mothee Kora*, 2 W. R., Cr. R., 1; but the conviction

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is not bad now; the only limit is to the punishment. See note on S. 392 and S. 454, Cr. Pro. Code.

Whipping See note under last Section.

Punishment for dacoity.

395. Whoever commits dacoity shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Charge.—That you, on or about the —— day of ——, at ——, committed dacoity, an offence punishable under S. 395 of the Indian Penal Code, and within the cognizance of the Court of Session. (Schedule IV, Cr. Pro. Code.)

A person charged with dacoity need not be charged with causing hurt as a separate offence, as causing hurt is included in the crime of dacoity—*Queen* v. *Abilakh Aheer*, 1 W., 65. It is not illegal to do so—W. R. Sp. No., Cr. C., 30.

Dacoity with murder.

396. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Murder as a dacoit, or dacoity with murder, may be enquired into and tried wherever the person accused happens to be when arrested, as well as where offence was committed. (S. 68, Cr. Pro. Code.)

Robbery or dacoity with attempt to cause death or grievous hurt.

397. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

Dacoity with grievous hurt, or attempt to cause death or grievous hurt, falls as to its punishment under simple dacoity, with this difference that the minimum punishment is seven years. Hence it is necessary in such a case that both Ss. 395 and 397 should be entered in a charge under the latter Section—4 W. R., Cr. L., 1, No. 855, 1865.

Using a deadly weapon in the commission of a theft would change the theft into robbery, and render the thief liable under this Section—*Queen* v. *Dwarka Aheer*, 2 W. R., Cr. R., 49.

The High Court as a Court of Revision (7 W. R., Cr. L., 2, No. 216, 1867) has declared that a person cannot be convicted under this Section for causing grievous hurt in *attempting to commit* a dacoity, but only where the dacoity has been committed. It is not easy to accede to this decision, as attempting to commit a dacoity amounts to committing a dacoity.

Attempt to commit robbery or dacoity when armed with deadly weapon.

398. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

Making preparation to commit dacoity.

399. Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for belonging to a gang of dacoits.

400. Whoever at any time after the passing of this Act shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

The Code was *passed* on the 6th of October 1860.

An offence under this Section may in addition to other places be tried wherever the person charged happens to be when the charge is made. (Illus., S. 67, Cr. Pro. Code.)

A man committed for his first offence cannot be said to be a habitual dacoit—*Government* v. *Gopal Doolye*, 2 N. A. R., 1852, 613.

To warrant a conviction a knowledge of the guilty practices of the gang, and a habitual association and community of living, or being present with the gang, after acquiring that knowledge, must be proved. It is not sufficient to show a party belonged to a gang by birth and early training—*Government* v. *Hurree Sing and others*, N. A. R., 1850, 292.

In several cases the Nizamut Adawlut has admitted evidence of bad character, relationship to dacoits, previous arrest on suspicion of dacoity, previous conviction as a dacoit, as evidence in proof of defendant being a habitual dacoit—*Government* v. *Horish Ghose and others*, 2 N. A. R., 1855, 235; *Government* v. *Cheeroo Chuney and others*, *id.*, 612; *Government* v. *Lugar Bearer*, 1 N. A. R., 1856, 112; *Government* v. *Looko Hari*, N. A. R., 1859, 88.

In a recent case there arose a discussion as to the amount of evidence necessary to support a conviction. Twelve persons were accused by approvers under this Section. Against some of them there was independent evidence to show that they were in possession of property the proceeds of one or more of the dacoities alleged against them. The Judge acquitted them on the ground that this at any rate would only convict them with one dacoity, and was not sufficient to corroborate the approvers' statements that prisoners belonged to a gang of dacoits. The High Court held:—"We think that the Judge's view is not correct. It is sufficient if the evidence is confirmatory of some of the leading circumstances of the story of the approvers as against the particular prisoner. So that the Court may be able to presume that he has told the truth as to the rest. The true rule on the subject of the corroboration of the evidence of approvers probably is, that if the Court is satisfied that the witness is speaking the truth in some material part of his testimony in which it seems that he is confirmed by unimpeachable evidence, there may be a just ground for believing that he also speaks in other parts as to which there may be no confirmation. (See Roscoe's Cr. Ev., 149, 150.)

If in a case where the prisoners are charged on the evidence of approvers with belonging to a gang of dacoits, the corroborative evidence goes to show that a prisoner is a dacoit, has been actually present at or associated with the alleged gang at any one of the dacoities spoken of by the approvers, or is found to be in possession of property taken at any one of such dacoities without being able satisfactorily to explain such possession, it is in our opinion, as a matter of law, an amply sufficient corroboration of evidence charging persons with being members of a gang of dacoits—*Queen* v. *Kalu Chan Doss*, 11 W. R., Cr. R., 21.

Punishment for belonging to a wandering gang of thieves.

401. Whoever at any time after the passing of this Act shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

In charging a jury for an offence under this Section, the Judge should put clearly—

1*st.*—The necessity of proof of association.

2*nd.*—The need of proving that the association was for the purposes of habitual theft, and that habit is to be proved by an aggregate of facts—*Sriram Venkata Sami, Appellant*, 6 Mad. R., 120.

Assembling for purpose of committing dacoity.

402. Whoever at any time after the passing of this Act shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Proof that the prisoner was one of a gang of dacoits, knowing the object of the gang, and remaining with it, is sufficient—*Queen* v. *Kendra Kamar and others*, 7 W. R., Cr. R., 97.

Proof of an *overt* act is not necessary—*Government* v. *Luchman Missree*, 1 N. A. R., 1853, 307.

OF CRIMINAL MISAPPROPRIATION OF PROPERTY.

Dishonest misappropriation of property.

403. Whoever dishonestly misappropriates or converts to his own use any moveable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a.*) A takes property belonging to Z out of Z's possession, in good faith believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this Section.

(*b.*) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But if A afterwards sells the book for his own benefit, he is guilty of an offence under this Section.

(c.) A and B being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this Section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this Section.

Illustration.

A finds a Government Promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this Section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.

In England it has been held that when a person took a cheque from the *finder*, and kept it with the intention of obtaining a reward, knowing the owner of the cheque,—Held, he was not guilty of theft in taking from the the boy, as he did not do it with felonious intent, and withholding it in expectation of a reward was not *larceny—Reg.* v. *Gardner*, 9 Cox Cr. C., 251. *Quære*, if he would be liable under S. 403 ?

What are reasonable means or what is a reasonable time in such a case is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it: it is sufficient if, at the time of appropriating it, he does not believe it to be his own property or in good faith believes that the real owner cannot be found.

Illustrations.

(a.) A finds a Rupee on the high road, not knowing to whom the Rupee belongs, A picks up the Rupee. Here A has not committed the offence defined in this Section.

(b.) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this Section.

(c.) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him to the person in whose favor the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this Section.

(d.) A sees Z drop his purse with money in it. A picks up the purse with intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this Section.

(*e*.) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this Section.

(*f*.) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this Section.

It has been decided that the charge should mention the person to whom the property belongs—*Queen* v. *Parbutty Churn Chuckerbutty*, 14 W. R., Cr. R., 13.

A charge of criminal misappropriation may be tried, may be enquired in to and tried, either in the district in which the property which is the subject of the offence is received, or in the district or districts in which the whole or any part of it has been misappropriated. (Illus., S. 47, Cr. Pr. Code.)

As a general rule, moveable property, the owner of which cannot be discovered, belongs to the finder. To this there are some exceptions. By Regulation V, 1817, treasure of gold or silver coin or bullion or of precious stones or other valuable property found turned in the earth, or otherwise concealed, does not belong to the finder, unless proper intimation of the finding has been given to the Zillah Judge, and the value of the treasure found does not amount to a lac of sicca rupees. And wrecks subject to salvage claims belong to the State.

By S. 168, Act IX, 1872, the finder of goods has no right to sue the owner for compensation or trouble and expenses voluntarily incurred by him to procure the goods and find out the owner; but he may retain the goods against the owner until he receives such compensation; and when the owner has offered a specific reward for the return of the goods lost, the finder may sue for such reward and retain the goods until he receives it.

By S. 169 of the same Act, if a thing, commonly the object of sale, is lost, and the owner cannot be found with reasonable diligence, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it;

(1) when the thing is in danger of perishing or of losing the greater part of its value;

(2) when the lawful charges of the finder amount to two-thirds of its value.

A person can be guilty of misappropriation without converting to his own use—*Enayet Hossein, Petitioner*, 11 W. R., Cr. R., 1; but when conversion is charged, it must be proved. So if a person finding property merely retains it in his possession, he cannot be convicted for conversion, though he has not made any effort to discover the owner—*Queen* v. *Abdool*, 10 W. R., Cr. R., 23.

By Illustration (*c*), an owner of joint property is guilty of criminal misappropriation if he sells it and appropriates the whole proceeds to his own use. In spite of this the High Court held, but not unanimously, that a partner could not be convicted of criminal misappropriation of the joint property —*Lall Chand Roy, Petitioner*, 9 W. R., Cr. R., 37. This decision has been set aside by a Full Bench Ruling (*Nrigendro Lall Chatterjee, Petitioner*, 21 W. R., Cr. R., 59).

Where money is paid to a person by mistake, and he either at the time of the receipt of the money or any time subsequently before its refund discovers the mistake and determines to appropriate the money he is guilty of criminal misappropriation—*Queen* v. *Shumsoondur*, 2 N. W. R., 473.

A peon was deputed by his gomastah to collect the debts of a firm. He received 8 rupees 3 annas from A, but instead of giving him the receipt furnished by the gomashtah, gave a receipt of his own. Subsequently he informed the gomashtah that he had not recovered the money. At his trial he pleaded that he had no dishonest intention, and his employers owed him 8-3-1. Held, the facts precluded the idea that he could have had any honest belief that he was entitled to keep back the money, and that he was guilty under this Section—*Queen* v. *Bessessur Roy*, 11 W. R., Cr. R., 51.

A is accused of dishonest misappropriation of property which he found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that a public notice of the loss of the property had been given in a place where A was, is relevant, as showing that it did not in good faith believe that the real owner of the property could not be found.

The fact that A knew or had reason to believe that the notice was given fraudulently by C who had heard of the loss of the property, and wished to set up a false claim to it is relevant, as showing that the fact that A knew the notice did not disprove A's good faith. (Illus., S. 14, Evidence Act.)

Dishonest misappropriation of property possessed by a deceased person at the time of his death.

404. Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine: and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration.

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this Section.

The effect of this Section when read with S. 403 is to limit the word "property" to moveable property. So when a person was convicted for misappropriating the house of a person deceased, the conviction was annulled—*Reg.* v. *Girdhar Dharam das*, 6 Bom. R., Cr. Ca., 33.

All the elements necessary to constitute the offence if the owner of the property were alive are necessary under this Section—*Queen* v. *Nobin Chunder Sirhar*, 12 W. R., Cr. R., 39.

OF CRIMINAL BREACH OF TRUST.

Criminal breach of trust.

405. Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property, in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

Illustrations.

(*a*.) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(*b.*) A is a warehouse keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(*c.*) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lac of Rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions, and employs the money in his own business. A has committed criminal breach of trust.

(*d.*) But if A, in the last illustration, not dishonestly, but in good faith believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A on account of that loss, yet A not having acted dishonestly, has not committed criminal breach of trust.

(*e.*) A, a revenue officer, is entrusted with public money, and is either directed by law or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(*f.*) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

To constitute criminal breach of trust it is necessary—

1*st.*—A trust or dominion over property.

2*nd.*—A disposal in violation of any direction of law, or contract, express or implied, prescribing the mode in which the trust ought to be discharged.

3*rd.*—Such disposal dishonestly.

So it has been held that a pledgee of property may be guilty of criminal breach of trust under the circumstances above stated (6 Mad. R., App., 28). But when the pledgee of a turban used it, it was held that a conviction was bad, on the grounds that deterioration by use does not amount to wrongful loss, nor using it amount to wrongful gain, so that the act could not be said to have been done dishonestly (3 Mad. R., App., 6). The distinction seems somewhat far fetched, as it seems as easy for a person to cause wrongful loss by constantly using as by destroying the article.

By the 24 & 25 Vict., Cap. 96, s. 80, trustees fraudulently disposing of property are guilty of a misdemeanor. Under this law it has been held that the conversion of the trustee must be of a kind inconsistent with the trust—*Reg.* v. *Jackson*, 9 Cox., 505.

Dominion over property.—Prisoners were charged with making away with a sum of money shut up in a box and placed in the Police treasury buildings over which they were on guard. The High Court held:—"But this conviction should not be under S. 409, which refers to cases of public servants and others having 'dominion over property,' such as bankers, attorneys, and the like. The prisoner had no dominion over this property, he only had charge of the box which contained it, and I agree with my colleague that the crime here disclosed is theft under S. 381 of the Indian Penal Code, &c."—*Queen* v. *Juggurnath Sing*, 2 W. R., Cr. R., 56.

But where a person is put in lawful possession of property, and then makes away with it, the offence is criminal misappropriation, and not theft. So where A, a Police officer, obtaining some property (in his official capacity), brought it to the Thannah and locked it up and kept the key. Ultimately the property, whilst in his custody, disappeared, and was found buried in a deserted homestead near his mother's house. Held, he was guilty of criminal breach of trust, and not of theft, as the prisoner was in lawful possession of the property which he subsequently made away with—*Bharut Chunder, Appellant*, 1 W. R., Cr. R., 2. So a constable who dishonestly converts to his own use the pay of Police entrusted to his care, is guilty not of theft but criminal breach of trust—*Queen* v. *Sabdar Meeah*, 3 W. R., Cr. R., 44. See note on S. 380.

A person is guilty of criminal breach of trust by dishonestly appropriating property to the advantage of a third party as he is by converting it to his own use—*Queen* v. *Nobin Chunder Sircar*, 12 W. R., Cr. R., 39.

Dishonestly.—If a person who receives money for any specific purpose, does not use it for that purpose, and on being called to account for it refuses

account, or falsely accounts for it, is sufficient for conviction. So where a person got 600 rupees to supply wood, did not do so, and when called on to account, falsely asserted that he bought wood from certain persons,—held sufficient—*Queen* v. *Golab Khan*, 10 W. R., Cr. R., 28. So where a peon sent to collect debts with receipts, collected a debt, and giving a receipt of his own, returned the original receipt to the gomashta who sent him,—held sufficient, although he had a claim against his masters for an equal amount—*Queen* v. *Bissessur Roy*, 11 W. R., Cr. R., 51. But where A, the general mokhtear for B and manager of his estates, drew out certain sums belonging to B from the collectorate, and remitted a portion of it as appeared from the chullan *on account*, held he did not dishonestly misappropriate the money—*Issen Chunder Ghose* v. *Peari Mohun Palit*, 16 W. R., Cr. R., 39. So it has been held that where a landowner permits an agent to mix up collections with his (agent's) own money, if the agent applies the money so collected dishonestly and falsifies the accounts so as to conceal his fraud, this would be sufficient to convict him; but if he did so, neither fraudulently nor dishonestly, of which keeping a correct account would be evidence, he would not be liable to a criminal prosecution—*Queen* v. *Kureem Bux*, 3 N. W. R., 30

Mere proof of gross deficiency in property placed in defendant's charge is not sufficient. So where a person was in charge of salt golas from 1861 to 1865, when a large deficiency of salt was discovered, proof of the deficiency without distinct proof of misappropriation was deemed insufficient—*Queen* v. *Brindabun Patnaik*, 5 W. R., Cr. R., 21.

Where a person dishonestly misappropriated money to his own use, the fact that the prosecutor had allowed him time to make out the amount due and repay it was not held to reduce the offence to one of breach of contract—*In re Sreekant Biswas*, W. R, Cr. R., 56.

It appears that this Section will not apply to the case of a servant who, with intent to cause wrongful loss, suffers his master's property to be spoilt. (Commrs.' 1st Rep., S. 561.)

Punishment for criminal breach of trust.

406. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

The charge should state the property in respect of which the offence was committed—8 W. R., Cr L., 2, No. 656, 1867.

The misappropriation of each item is a distinct offence, and where the evidence shows that numerous items form the subject of an enquiry, a committing officer should select some few of those items he considers best proved and commit on them—*C. A. Chetter, Appellant*, 15 W. R., Cr. R., 8.

A charge of criminal breach of trust may be enquired into and tried either in the district in which the property which is the subject of the offence was received, or in the district or districts in which criminal breach of trust in whole or in part has been committed. (Illus. S. 67, Cr. Pro. Code.)

In a recent case the High Court, but not unanimously, held, that a partner cannot be convicted for criminal misappropriation of joint property—*Lall Chand Roy, Petitioner*, 9 W. R., Cr. R., 37. This decision has been set aside by a Full Bench Ruling, which has asserted that a partner can commit criminal misappropriation. See note under S. 403.

Criminal breach of trust by a carrier, wharfinger, &c.

407. Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with

imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A person is charged with criminal breach of trust under this Section only; if it appears that he has been guilty only of the minor offence under S. 406, he may be convicted without altering or amending the charge. (S. 457, Cr. Pr. Code.)

Criminal breach of trust by a clerk or servant.

408. Whoever, being a clerk or servant, or employed as a clerk or servant, and being in any manner entrusted in such capacity with property or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

That he, on or about ——, at ——, being a servant in the employment of A, and in such capacity entrusted with dominion over property, committed criminal breach of trust with respect to *that* property by dishonestly converting such to his own use, and that he has thereby, &c.—2 W. R., Cr. L., 15, No. 203, 1865; 8 W. R., Cr. L., 5, No. 720, 1867.

Clerk—A writer, one who is employed in the use of the pen in an office, public or private, either for keeping accounts or entering minutes. (Wharton, L. Lex., 195.)

The three essentials to the relation of master and servant are: (1) exclusive service, *i.e.*, the time of the servant must be at the exclusive disposal of the master, (2) payment of wages, (3) and contract of master. (Stone, 257; Wharton, L. Lex., 597.)

To constitute an offence under this Section the property must have been entrusted to defendant in his capacity of servant—3 W. R., Cr. L., 12, No. 627, 1865. By S. 29 property in possession of a person's clerk or servant is considered to be in such person's possession. Following the analogy of English law, it appears that, in cases in which a clerk or servant receiving property from a third person, dishonestly converts it to his own use before making it over to his master, he is guilty of criminal breach of trust; but if the conversion takes place after the master has received the property, and made it over to him to keep, then theft is committed. Where a person entrusted another to pay money to a certain person, but without doing so he converted it to his own use, he was found guilty of criminal breach of trust—*Queen* v. *Banee Madhub Ghose*, 8 W. R., Cr. R., 1.

Criminal misappropriation by an agent is not punishable under this Section, but S. 409. The distinction between master and servant, and principal and agent is, that "a principal has the right to direct what the agent has to do; but a master has not only that right, but also to say how it is to be done." (Stone, 142.)

See note under S. 381.

Criminal breach of trust by public servant, or by banker, merchant, or agent.

409. Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant, or in the way of his business as a banker, merchant, factor, broker, attorney

or agent, commits criminal breach of trust in respect of that property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Where a public servant, who has obtained legal possession of property, afterwards makes away with it, he is guilty of criminal breach of trust, and not of theft. So where a constable, obtaining possession of *lawaris* property, converted it to his own use, he was convicted under the Section—*Queen* v. *Bharut Chunder*, 1 W. R., Cr. R., 2; so also when a constable was entrusted with money, the pay of his Thanna Police, and made away with it on his way to the Thanna—*Queen* v. *Subdar Meeah*, 3 W. R., Cr. R., 44. In the case of the *Queen* v. *Juggurnath Sing and others*, 2 W. R., Cr. R., 55, defendant was put on guard over a box containing money, and made away with the latter. The High Court held defendant was not guilty under this Section, but under S. 381, as the former Section only refers to cases of public servants and others having dominion over property, such as bankers, attorneys, and the like, and defendant had no dominion over the property but only charge of the box which contained it.

To convict a public servant under this Section, it must be proved that he received the property in his capacity of public servant. Where a Court Inspector, who was in charge of money as a public servant, without authority placed a constable in charge of it, taking private security from him to secure himself, and the constable made away with the money, the High Court held that the constable was not entrusted with the property as a public servant, and was only punishable under S. 408—*Queen* v. *Banee Madhub Ghose*, 8 W. R., Cr. R., 1. The effect of this ruling has been considerably modified by that in the *Queen* v. *Ram Dhun Sing*, 13 W. R., Cr. R., 77, where it was held that where a head clerk of an office entrusted the management of stamps to a subordinate with the knowledge and sanction of his superiors, and the subordinate made away with the stamps, the latter was guilty as a public servant under this Section—*Queen* v. *Ram Dhun Roy*, 13 W. R., Cr. R., 72. So a naib nazir is a public servant within the meaning of this Section, and not a mere private servant of the nazir—*Queen* v. *Mahomed Hossein*, 2 N. W. R., 298. Where a village shroff whose duty it was to assist in collecting public revenue received grain from ryots, and gave receipts as if for money received in pursuance of a private agreement,—held he could not be convicted under this Section, as he was not authorized to receive the public revenue in kind, and the party delivering the grain did not discharge himself from liability for the public revenue. (4 Mad. R., App., 33.)

Banker.—One who receives money in trust to be drawn again as the owner has occasion for it. (Wharton, L. Lex., 113.)

Merchant.—One who traffics to remote countries. (*Id.*, 605.)

Factor.—An agent employed to sell goods or merchandise consigned to him, or for his principal for compensation commonly called factorage or commission. (*Id.*, 380.)

Broker.—An agent employed to make bargains and contracts between other persons in matters of trade, commerce, and navigation for a compensation called brokerage. (*Id.*, 145.)

Attorney.—One who is appointed by another to do something in his absence, and who has authority to act in the place of him by whom he is delegated. (*Id.*, 99.)

Agent.—A person appointed to transact the business of another. (*Id.*, 48.)

The accused revenue officers, a Patel and a Talati, were convicted by a Magistrate with full powers on an alternative charge under this Section, and for undue exaction of a valuable thing under color of authority under S. 16,

Reg XVII, 1827. It was held that the alternative charge was bad, as both offences did not fall within this Code—*Reg.* v. *Ajam Dala*, Bom. H. Ct., 1871.

OF THE RECEIVING OF STOLEN PROPERTY.

Stolen property.

410. Property the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated, or in respect of which the offence of criminal breach of trust has been committed, is designated as "stolen property." But if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

If the property by any means comes into the possession of a person legally entitled to it, it ceases to be stolen property. So where a thief was found with the stolen property, which was taken from him at first, but afterwards returned by the owner to the thief, who at his direction sold it to a receiver, the receiver was held to have been wrongly convicted of receiving the goods—*R.* v. *Dolan*, Arch., 373; *Queen* v. *Schmidt*, L. R., 1866, Cr C. R., 15.

By S. 108, Act IX, 1872, a seller cannot, as a rule, give a better title than he has himself. So if A buys from B in good faith a cow which B had stolen from C, the property in the cow does not pass to A.

Dishonestly receiving stolen property.

411. Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

A charge of receiving or retaining stolen goods may be enquired into and tried either in the district in which the goods were stolen, or in any district in which any of them were at any time dishonestly received or retained. (Illus., S. 66, Cr. Pro. Code.)

To support a conviction, evidence must be given that the property was actually stolen—*Queen* v. *Buldeo Pershad*, 2 N. W. R., 187. So where a person was convicted with receiving stolen property, *viz.*, rubber, the property of Government in Cachar, the conviction was set aside on the ground that there was no evidence that it was stolen or that defendant knew it was—*Queen* v. *Bujo Hari*, 19 W. R., Cr. R., 37.

The record of the original case has been held admissible in India as proof of theft against the receiver, but not conclusive proof; and the latter has been allowed to produce evidence to controvert the former conviction and negative the fact of a theft having been committed (N. A. Const., No. 217); but looking at the case of the *Queen* v. *Hurdut Surma*, 8 W. R., Cr. R., 68, in which defendant was charged with giving false information regarding an offence, and the High Court held, that the record of the original case, which showed that two persons had been convicted, and an offence committed, was inadmissible, it appears as if such procedure would not now be followed.

Receives or retains.—The offences of receiving and retaining are different. A person cannot be convicted of receiving if he had no guilty knowledge at

the time of receipt, but he is guilty of retaining if he subsequently knows or has reason to believe the property was stolen—4 Mad. R., App., 42.

Knowing or having reason to believe.—A conviction for receiving can only be sustained when there is proof of the personal possession of the prisoner by having the property in his own hands, or directly under his personal charge or within his home with his consent, and with the knowledge or reason to believe, that the property is stolen property—*Government* v. *Goluck Dey Kait and others*, N. A. R., 1849, 147; *Meer Yar Ali, Petitioner*, 13 W. R., Cr. R., 70; so the mere fact that defendants knew where other persons had buried stolen property is not sufficient—*Queen* v. *Bishoo Manjee*, 9 W. R., Cr. R., 16; so it has been held that where the only evidence of the receipt of stolen property by a wife was the fact that the property was found in the house where she lived with her husband, it is insufficient, as it pointed to possession of the husband rather than that of the wife—*Queen* v. *Desilva*, 5 N. W. R., 120.

It has been held insufficient to raise the presumption of guilty knowledge that the prisoner bought the stolen property from a person of bad or doubtful character without enquiry as to the means by which he acquired it, or that he only advanced 50 rupees on property valued at 150 rupees, or that he claimed the property as his own at the time of trial (B. Dig., S. 4282); *Government* v. *Gungaram Dass*, 2 N. A. R., 1852, 307; *Queen* v. *Doyal Shilydar*, 6 W. R., Cr. R., 87.

Possession of goods recently stolen, with an inability to show how possession was obtained, and where the person in possession does not appear to be a receiver, and there is no reason to suppose that the property has been obtained from a third party, raises the presumption that he is not a receiver but was concerned in the theft—*Queen* v. *Jogeshur Bagdee*, 7 W. R., Cr. R., 109; *Government* v. *Meajan Sheik*, N. A. R., 1855, 28; *Queen* v. *Shuriffuddeen*, 13 W. R., Cr. R., 26.

Where a person was found in possession of stolen property eight days after a dacoity, it was considered that there was as good ground to charge him with dacoity as receiving—*Queen* v. *Motee Jolaha*, 5 W. R., Cr. R., 66. But where stolen property was found in the possession of certain persons two years after the theft, it was considered insufficient to raise any presumption—*Government* v. *Ikram and others*, 2 N. A. R., 325.

It has been held by the Calcutta High Court that, where the stolen property is not in Court before the eye of the deposing witness, evidence of identification is inadmissible—*Queen* v. *Musst. Joomnee*, 8 W. R., Cr. R., 16. It is probable that the rule was only laid down as regards property capable of being produced. If the stolen property is lost or destroyed, it is difficult to see why such evidence should be excluded.

In the English Courts, evidence of the accused having received goods stolen at other times is admissible (Taylor, L. Ev., S. 323), and the same is receivable in the Courts of this country under S. 15, Act I, 1872.

Where a person is accused of receiving a particular stolen article, the fact that at the same time he was in possession of many other stolen articles is relevant as tending to show that he knew each and all of the articles in his possession to be stolen (Illus., S. 14, Act I, 1872). On the other hand, the accused is allowed to show that his conduct was inconsistent with the idea that he knew the property was stolen. So the fact that he refused to sell it below its value is relevant. (Illus. S. 21, Act I, 1872.)

A is accused of receiving stolen property knowing it to be stolen. It is proposed to prove that he denied possession of this property. The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, require the property to be identified before the denial of possession is proved, or permit the denial of the possession to be proved before the property is identified. (S. 136, Act I, 1872.)

A receiver may be convicted though the thief is unknown, or has not been brought to trial, provided the fact of a theft having been committed is fully established (N. A. Const., Nos. 133, 217). How far the acquittal of a person for theft would be admissible in favour of the receiver has not as yet been

judicially settled in India. In England, where a prisoner was indicted for receiving stolen goods, and a witness for the Crown, after confessing that he was the thief, admitted on cross-examination that he had been tried and acquitted of the theft, the Judges held that the acquittal of the principal, though not conclusive evidence of his innocence, was a fact to go to the jury with his confession in Court (Taylor, L. Ev., S. 1505). Under the old Procedure Code a person convicted under this Section could not also be convicted for theft of the same articles—1 W. R., Cr. Ca., 2, No. 16, 1864; nor for an offence under S. 409—*Queen* v. *Shunker and another*, 2 N. W. R., 312; nor for an offence under S. 414—4 Mad. J., 79; No. 1097, 1868. Such convictions are legal under S. 454 of the present Code, but care must be taken in awarding punishment. (Illus. (*l*), S. 454, Cr. Pro. Code.)

By the 24 & 25 Vic., C. 96, S. 100, an owner prosecuting a receiver or thief to conviction is entitled to restitution of the property, except in case of a valuable security *bonâ fide* paid or discharged, or a negotiable security taken or received for valuable consideration. In my last edition I pointed out that though no similar law had been passed in this country that the Courts have always returned specific stolen property and even property bought with stolen money to the owner—N. A. Const., 604; *Mohun Lall* v. *Musst. Luchminya*, N. A. R., 1835, 1. But now by S. 418 of the Criminal Procedure Code, when a trial in any Criminal Court is concluded, the Court may make such order as appears right for the disposal of any property produced before it, regarding which any offence appears to have been committed; and looking at this with S. 108, Act IX, 1872, it would certainly appear as a rule that the proper order, in cases under this Section, is that the property be returned to the owner—*Queen* v. *Lall Chand Sheikh*, 20 W. R., Cr. R., 38.

Stolen property should not be restored before trial by a committing officer—*Government* v. *Kistolall Dutt*, N. A. R., 1854, 218.

Whipping may be awarded in lieu of other punishment and as an additional punishment on a second conviction. (Ss. 2 and 3, Act VI, 1864.)

Dishonestly receiving property stolen in the commission of a dacoity.

412. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

That he, on or about ——, at ——, dishonestly received stolen property, the possession of which he knew or had reason to believe had been transferred by the commission of a *dacoity*, &c.—2 W. R., Cr. L., 23, No. 352, 1865; *Queen* v. *Huribuns Lall Lalla and another*, 4 W., 121.

This Section refers to persons other than the actual dacoits, and a person punished for dacoity cannot be punished for receiving on the same facts—*Queen* v. *Abdool Hossein and others*, 1 W. R., Cr. R., 48. But see note to S. 72, under the present law such a conviction is not illegal. See note on S. 411.

An acquittal on a charge of dacoity does not bar a trial for retaining stolen property obtained in the dacoity—*Queen* v. *Noor Mahomed Nushya and others*, 1 W., 121.

There must be distinct proof that the accused knew or had reason to believe that a dacoity had taken place, or that the persons from whom he

obtained the property were dacoits, otherwise he can only be convicted under S. 411 for the minor offence—*Queen* v. *Jogeshur Bagdee and others*, 7 W. R., Cr. R., 109; *Queen* v. *Samiruddin*, 18 W. R., Cr. R., 25.

Whipping may be awarded as pointed out under last Section. (Ss. 2 and 3, Act VI, 1864.)

Habitually dealing in stolen property.

413. Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Whipping may be directed in lieu of other punishment; and in addition on a second conviction. (Ss. 2 and 3, Act VI, 1864.)

Assisting in concealment of stolen property.

414. Whoever voluntarily assists in concealing or disposing of, or making away with, property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

This Section applies only where there has been no actual receipt of the stolen property by the accused; receiving is punishable under Ss. 411, 412. (4 Mad. J., 79, No. 1097, 1868.)

OF CHEATING.

Cheating.

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induce the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person, in body, mind, reputation or property, is said to "cheat."

Explanation.—A dishonest concealment of facts is a deception within the meaning of this Section.

Illustrations.

(*a.*) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(*b.*) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(*c.*) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(*d.*) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonored, intentionally deceives

Z, and thereby dishonestly induces Z to deliver the article intending not to pay for it. A cheats.

(*e.*) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(*f.*) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him, and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(*g.*) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(*h.*) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(*i.*) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage-money from Z. A cheats.

Prisoners received a promissory note promising to return certain jewels pledged to them, but not intending to do so. Subsequently they claimed to retain the note for another debt alleged due by the lender. Held case fell within Illustrations (*f*) and (*g*)—*Queen* v. *Sheo Durshun Dass*, 3 N. W. R., 17.

" The offence of cheating must, like that of extortion, be committed by the wrongful obtaining of consent. The difference is, that the extortioner obtains the consent by intimidation, and the cheat by deception . . . . . We propose to make it cheating to obtain property by deception in all cases where the property is fraudulently obtained,—that is to say, in all cases where the intention of the person who has by deception obtained the property was to cause a distribution o fproperty which the law pronounces to be a wrongful distribution, and in no other case whatever. However immoral a deception may be, we do not consider it an offence against the right of property if its object is only to cause a distribution of property the law recognizes as rightful. A few examples will show the way in which this principle will operate."

" A intentionally deceives Z into a belief that he is strongly attached to Z. A then induces Z to make a will by which a large legacy is left to A. Here A's conduct is immoral and scandalous. But still A has a legal right to receive the legacy, even if the clearest proofs of A's insincerity were laid before a tribunal. Even if A, in open Court, avows his insincerity, the will cannot on that account be set aside. The gain therefore which it obtains under Z's will is not, in the legal sense of the expression, wrongful gain. He has practised deception. He has thus caused gain to himself and loss to others. But that gain is a gain to which the civil law declares him entitled, and which the civil law will assist him to recover if it be withheld from him. The loss is a loss which the civil law declares the loser must put up. A therefore has not committed the offence of cheating under one definition.

" But suppose that the civil law should contain, as we think that it ought to contain, a clause declaring void a will made in favor of strangers by a testator who erroneously believes his children to be dead. And suppose that A intentionally deceives Z into a belief that Z's only son has been drowned, and by this deception induces Z to make a will by which everything is left to A. Here the case will be different. The will being null, no property which A could obtain under that will would be property he had no legal right to obtain, and to which another person had a legal right. The object of A has therefore been wrongful gain to himself attended with wrongful loss to others. A therefore has been guilty of cheating.

" Again, the case of a buyer and seller haggling, though the buyer may have falsely depreciated the article and the seller falsely extolled it, yet none of these untruths were such as, after the article had been delivered and the price paid,

would be held by a Civil Court to be a ground for pronouncing that either of them possessed what he had no right to possess. Neither buyer nor seller has been guilty of cheating. But if the seller has produced a sample of the article, and has falsely assured the buyer that the article corresponds to the sample, the case is different, and it is cheating. So if the seller passes off ornaments of paste on the buyer for diamonds. So if the buyer intending to acquire possession of the goods without paying for them, induces the seller by deception to take a note which the buyer knows will be dishonored. So a man by a false representation obtains a loan of money not meaning to repay it; a man who, by false representation, obtains an advance of money, not meaning to perform the service, or deliver the article for which the advance was given; a man who by falsely pretending to have performed a work for which he obtains pay, to which he is not entitled. (P. C. Note N., 82.)

To support cheating there must be a person who is deceived. So where a person was sent to buy milk, knowing it was watered, in order to get up a case against the seller, it was held there was no deception, and consequently no cheating—*Tamizuddin* v. *Kangali Gwala*, 18 W. R., Cr. R., 61. So where the accused secretly entered an exhibition building without having purchased a ticket, held it did not amount to cheating: but it would have been different if he had told the door-keeper that he had a ticket, and thus got access to the building—*Reg.* v. *Mehervanji Bijanji*, 6 Bom. R., Cr. Ca., 6. So travelling in a railway carriage without a ticket does not amount to cheating—*Reg.* v. *Daya bhae*, 1 Bom. R., 140.

Cheating cannot be based on deception in respect to a person's *after intention;* the offence turns on the present intention of the offender not to do what he intends the other party to expect he will do. But his after conduct will be admissible in evidence as proof of his previous dishonest intentions—*Sadoo Churn Pal, Petitioner*, 4 W. R, Cr. R., 13; *Queen* v. *Heeramun Hulwye*, 5 W. R., Cr. R., 5; *Reg.* v. *Hargovandás*, 9 Bom. R., 448.

It is also necessary that the person deceived is dishonestly induced to do or omit something which he otherwise would not do or omit. In short, that the act or omission was caused by the deception. So where a person when delivering up property knew that the representations made by the accused false, no conviction could be had—*Reg.* v. *Mills*, 7 Cox, 263.

A, knowing that a Bank had stopped payment about 40 years ago, gave notes of it to a person to pass. The man passed the notes, and defendants obtained value for them. Held, he was guilty of obtaining money by false pretence—*Reg.* v. *James Dowey*, 11 Cox Cr. C., 115.

This Section is far more extensive than the 24 & 25 Vic., C. 96, S. 88, which only makes it criminal to obtain fradulently any chattel, &c., by false pretences from another. It differs from Indian law, inasmuch as the false pretence must be of an existing fact which does not seem necessary here. When the prosecutor, on the faith of misrepresentations made by prisoner as to the state of his business, entered into partnership with him, and advanced money as part of the capital of the firm, and did not rescind the contract, it was held that that no conviction would lie, as prosecutor did not part with the money within the meaning of the Statute having a joint interest in it as partnership capital—*Reg.* v. *Waston*, 7 Cox Cr. C., 371. He would fall within the latter portion of this Section.

It has been held in England that a false pretence as to the *value of a business* will not sustain a conviction for obtaining money by false pretences—*Reg.* v. *Waston*, 27 L. J., 18 M. C.; *Reg.* v. *Williamson*, 11 Cox Cr. C., 329, if any business existed; but otherwise if there was no such business at all—*Reg.* v. *Crabb*, 11 Cox Cr. C., 85. Such would appear to be sufficient in India.

How far evidence of collateral facts is admissible in proof of fraud has not been raised in India, and cannot be said to be definitely settled in England. It would, however, appear that in the English Courts proof of a previous false

statement in order to obtain money made by the defendant to the prosecutor, under circumstances similar to those of the act charged, is admissible; but proof of false statements made to other persons in order to obtain money is not. (Ros., 447.)

Cheating by personation.

416. A person is said to "cheat by personation," if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations.

(*a*.) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(*b*.) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

A cheats by representing B to be the daughter of C, knowing she is the daughter of D, A is guilty under this Section, and not for abetment of an offence under it—*Queen* v. *Dhunput Ojhab*, 7 W. R., Cr. R., 51.

So when the accused represented to the prosecutor that a girl was a Brahmin, when she was a Sudra, and thus induced him to part with his money in consideration of the marriage of the girl to his brother, it was held cheating under this Section—*Queen* v. *Mohun Chunder Sil*, 16 W. R., Cr. R., 42.

A gave B 4 annas to buy a stamp for him, and when the stamp vendor asked B his name he said "A." Held, not cheating by personation, but an offence under S. 177 of the Penal Code—*Reg.* v. *Raghoji*, 3 Bom. R., Cr. C. 42.

Punishment for cheating.

417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Charge.—That you, on or about the —— day of ——, at ——, committed cheating, an offence punishable under S. 417 of the Indian Penal Code, and within the cognizance of the Court of Session. (Illus. S. 439, Cr. Pro. Code.)

This form is strictly correct according to the illustration referred to above; but at the same time it appears from the illustration to S. 443 that it would be better to set out the manner in which the cheating took place.

By Illustrations (*b*) and (*c*) if A is charged with cheating B, and the manner of cheating is not set out, or set out incorrectly, and B enters on his defence and gives his own account of the transaction, the Court may infer that the omission to set out the manner of cheating is not material. But if there were many transactions between A and B, and A has no means of knowing to which of them the charge referred, and offered no defence, the Court may infer that the omission to set out the manner of the cheating was a material error.

Cheating with knowledge that wrongful loss may be thereby caused to a person whose interest the offender is bound to protect.

418. Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates he was bound, either by law, or by a legal contract, to

protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for cheating by personation.

419. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

A intended to register a document, but was too ill to do so; and B, who was known to A, personated A and had the deed registered in her name. Held, in the absence of fraud, that A was not guilty of cheating by personation under this Section, but of an offence under S. 94 of Act XX, 1866—*In re Soothy Bewa*, 11 W. R., Cr. R., 24.

Cheating and dishonestly inducing a delivery of property.

420. Whoever cheats, and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter, or destroy the whole or any part of a valuable security or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A charge under this Section should state that the property obtained was the property of the person defrauded—*Queen* v. *Williams*, 1 Mad. Rep., 31.

OF FRAUDULENT DEEDS AND DISPOSITIONS OF PROPERTY.

Removal or concealment of property to prevent distribution among creditors.

421. Whoever dishonestly or fraudulently removes, conceals, or delivers to any person, or transfers, or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonestly preventing from being made available for his creditors a debt or demand due to the offender.

422. Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprison-

ment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest execution of deed of transfer containing a false statement of consideration.

423. Whoever dishonestly or fraudulently signs, executes, or becomes a party to any deed or instrument which purports to transfer or subject to any charge, any property or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest removal or concealment of property.

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

This Section contemplates a concealment or removal of property from where it is deposited as can be considered fraudulent, whether the fraud is intended to be practised on creditors or partners. So where one of several partners removed the partnership books at night, and, when questioned, denied having done so, Held it was sufficient for conviction—*Gour Benode Dutt*, 21 W. R., Cr. R., 10.

OF MISCHIEF.

Mischief.

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief."

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations.

(*a.*) A voluntarily burns a valuable security belonging to Z, intending to cause wrongful loss to Z. A has committed mischief.

(*b.*) A introduces water into an ice-house belonging to Z, and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(*c.*) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing damage to Z. A has committed mischief.

(*d.*) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(*e.*) A, having insured a ship voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(*f.*) A causes a ship to be cast away, intending thereby to cause damage to Z, who has lent money on bottomry on the ship. A has committed mischief.

(*g.*) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(*h.*) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause, damage to Z's crop. A has committed mischief.

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The essence of this offence is that the act is done with intent to cause, or knowing that it is likely to cause, wrongful loss, &c.; and an act done rashly or negligently without such intention or knowledge is not mischievous. So where persons were convicted of mischief, on the grounds that, whilst employed in floating timber through a bridge, some of the logs damaged the arch, though there was no finding of intention or knowledge, the conviction was set aside. (5 Mad. R., App., 40.) So the mere fact of allowing cattle to stray, and the cattle entering on complainant's land caused damage, is not sufficient. (6 Mad. R., App., 36.) So where certain parties under color of right removed a bar which obstructed a fishery, it was held they were not guilty of mischief, on the grounds that there was no intent to injure or knowledge that wrongful loss would ensue, as the act was done for a totally different object—*Reg.* v. *Denoo Bundhoo*, 12 W. R., Cr. R., 1.

A, the occupier of land, gave notice to B, who kept pigeons, that they damaged his land, and that he would destroy them if they were not restrained. After this, finding them again on his land, he shot one of them. Held, he was not guilty of unlawfully and wrongfully killing a pigeon under S. 23, Act 24 & 25 Vic., c. 96, as it was done under a color of right—*Taylor* v. *Newman*, 9 Cox Cr. C., 314.

To cause.—A was convicted under this Section for his cow trespassing. It was proved that this cow had previously strayed into B's ground and done damage. In the High Court, the conviction was set aside. Couch (C.J.) held—

"This Section requires something more than neglect on the part of the owner of the cattle to keep them from straying. He must in some way cause the cattle to enter the field, knowing, that by so doing, he is likely to cause damage. It was not even shown that the cow was let loose. So that supposing that the letting the cow loose with a knowledge that it had such a propensity to go into Major Forbes' compound, that it would inevitably go there on being let loose, would be a causing within the meaning of S. 425; there was no evidence here that the accused person did this, &c. When the owner of the cattle does nothing which may be fairly considered as 'causing the animals to go into the compound,' he is not liable to be punished." And see illustration (*b*) to this Section—*Major Forbes* v. *Grish Chunder Bhutacharjee*, 14 W. R., Cr. R., 31.

Destruction of any property or any such change, &c.—The act done must be shown to have caused destruction of some property or such a change in it or its situation as destroys it, diminishes its value, or affects it injuriously. A was convicted under S. 432 for erecting a dam across the bed of a river, knowing it to be likely that the lands of the adjacent village would in consequence be

inundated. The Madras High Court held that the alleged probable consequential damage to other property, which was the cause of the complaint, did not of itself constitute mischief. Collet (J.) dissented on the ground that the knowledge of likelihood to cause damage was sufficient, and placing a dam across an irrigation channel was a change in its situation likely to be attended with damage and affect it injuriously. (4 Mad. R., 16). But see the case under S. 430.

Where certain inhabitants of one village settled out in boats, pulled up, and removed a number of fishing stakes lawfully fixed in the sea, within three miles of the shore, by the villagers of a neighbouring village, Held, that the removal of the stakes though without any intention to appropriate them occassioned "damage," and as their acts were wrongful, they were guilty of mischief—*Reg.* v. *Kaseya Rama*, 8 Bom. R., Cr. C., 63.

Cutting a ripe crop grown to be cut, does not affect it injuriously—*Mahomed Toyaz* v. *Khan Mahomed*, 18 W. R., Cr. R., 10.

A was accused of mischief for allowing his cows to graze on B's land without paying for them. Held no mischief. (5 Mad. R., 30).

Punishment for committing mischief.

426. Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

A commits mischief by cutting down a tree in a Government forest. The tree overhangs a stream, and falls into it. A commits theft by cutting the tree and floating it down to his village, where he sells it. A may be convicted under Ss. 378, 426; but not punished more than if convicted under 379 only. (Illus., S. 454, Cr. Pro. Code.)

Committing mischief and thereby causing damage to the amount of 50 Rupees.

427. Whoever commits mischief and thereby causes loss or damage to the amount of fifty Rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Evidence of damage committed at several times in the aggregate; but not at any one time exceeding 50 rupees will not sustain a conviction—*Reg.* v. *Williams*, 9 Cox Cr. Ca., 338.

Mischief by killing or maiming any animal of the value of 10 Rupees.

428. Whoever commits mischief by killing, poisoning, maiming, or rendering useless, any animal or animals of the value of ten Rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Mischief by wounding is not a separate offence. The difference between wounding and maiming is that the latter implies a permanent injury, while the former is any mutilation or laceration which breaks the continuity of the outer skin—*Reg.* v. *George Bullock*, 10 Cox Cr. Ca., 127. So where the prisoner poured a quantity of nitrous acid in the ear of a mare, some of which getting into her eye produced blindness, it was held to constitute maiming—*Reg.* v. *Owens*, 1 Moo. C. C., 205.

429. Whoever commits mischief by killing, poisoning, maiming, or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other animal of the value of fifty Rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by killing or maiming cattle, &c., or any animal of the value of 50 Rupees.

When an animal, or the sex of an animal, is specifically mentioned in a Section, the charge should describe it as such. (Stone, 230.)

It appears that the Madras High Court has ruled, that a calf does not come within the terms "bull, cow, or ox." (Mayne's P. Code, 283.) The decision would agree with decisions on similar points by the English Courts if the animal was described as a calf, without giving the sex of the animal; but if the animal was described as a "bull calf," &c., the description would fall within this Section according to the English decisions. (Ros., 81; Taylor, L. Ev., S. 234.)

From the words "maiming or rendering useless" it appears the wounding must inflict a permanent injury to bring the case under this Section, and not under S. 426 or 427.

A wrongfully kills a buffalo worth 60 rupees belonging to B, and then steals the carcass. A may be convicted under Ss. 379 and 429, but must not be punished more severely than if convicted under S. 429 only. (Illus., S. 454, Cr. Pro. Code.)

430. Whoever commits mischief by doing any act which causes or which he knows to be likely to cause a diminution of the supply of water for agricultural purposes, or for food or drink for human beings, or for animals which are property, or for cleanliness, or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by causing diminution of water for agricultural purposes, &c.

In the case of *Ram Golam Singh, Petitioner*, 6 W. R., Cr. R., 59, defendant was convicted under this Section for levelling, partially filling up, and cultivating a watercourse over his lands, which conveyed water to the lands of the prosecutor, as he knew that the prosecutor was entitled to the water and that by that act his right would be obstructed. But see case under s. 425.

431. Whoever commits mischief by doing any act which renders, or which he knows to be likely to render, any public road, bridge, navigable river, or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to public road, bridge, or river.

CHAP. XVII. S. 431.

In *Reg.* v. *United Kingdom Electric Telegraph Company*, 9 Cox Cr. Ca., 137, defendants were indicted for a public nuisance in obstructing a highway by digging holes and putting up posts. Martin B held—

1*st.*—In case of an ordinary highway, though of varying and unequal breadth running between fences one on each side, the right of passage or way extends (unless there is evidence to the contrary) to the whole space between the *fences*, and the public are entitled to use of entire of it as the *highway*, and are not confined to the part metalled for the more convenient use of carriages and foot-passengers.

2*nd.*—A permanent obstruction erected on a highway and placed there without lawful authority, which renders the way less commodious than before to the public, is unlawful.

So in *Reg.* v. *Train*, 9 Cox Cr. Ca., 184, it was held that the withdrawal of a part of the public highway from the use of the public is a nuisance; and that a street tramway is such a withdrawal and a nuisance. Held also, that vestry had no power to grant such power, and that evidence to show that numerous persons used the tramway vehicles, and thereby a large expenditure was saved to the public, was inadmissible, as these persons were not using the highway in the *ordinary manner*.

In the case of *Reg.* v. *The Longton Gas Company*, 8 Cox, 317, the powers of persons to open up roads were fully discussed. In this case town Commissioners empowered by statute to light the public streets with gas, and break up the footway and carriage way to lay down gas pipes, and to enter into contracts with other Companies to do such works, were held not able to confer on a private Gas Company (not having Parliamentary powers) authority to break up the footway and carriage way to lay down service pipes from private houses to the main pipes, and that any householder directing the carrying out of such works for the purpose of lighting his house with gas was liable to be convicted as a principal giving orders to commit a nuisance.

Cockburn (C.J.) held: It was admitted on the part of the defendants that they had no Parliament powers which gave them authority to create obstructions or lay down pipes for private supply. The question, therefore, was confined to the acts done by defendants in laying bricks and earth, and digging trenches in one instance across the street, but in the other instances across the footway of the street, for the purpose of laying down supply or service pipes to private houses from the mains laid down under the powers of the Commissioners for public lighting. It appeared that these service pipes had been laid down by the Joint Stock Company at the request and by the directions of the owners of the houses; and that they had been so laid down carefully and without creating any unnecessary nuisance. It was not disputed, however, that the highway was obstructed, so as to amount to an indictable nuisance, unless the defendants were justified in committing the acts complained of in the exercise of the right of each householder to make such light temporary obstruction on a highway or footway as might be necessarily incidental to the enjoyment of his property, such for example as the obstruction caused in using common coal holes in the pavement, the unloading of carts, the putting up boards for repairing and other similar temporary obstructions. We are of opinion that the present case does not fall within any of the exceptions to the general law as to the obstruction of highways. We find no authority according to which so wide and large an exception to the general rule is established as would allow either a private person or anybody acting at the request of private persons to open streets for the purpose of supplying private houses with water or gas from sources from which a supply of water or gas may be procured. Such an act is not in any respect a user of the highway such as occurs in when a cart or carriage stops before a door, or when goods are unloaded on the highway to be immediately taken into the house. Such matters may well be said to be a use of the highway as a highway; and this is made clear by the rule that when there is an excess or abuse, in such cases the party is indictable. Thus, when instead of using the highway merely for taking the goods in, the party sawed blocks of wood in the street, before

taking them in, he was held to be indictable for so doing. The case put, of the coal-holes in the pavement of a street, is perhaps the one most apparently in favor of the defendants. It is not however to be assumed that there is any right in the owner of a house to open this pavement, to make a new coal-hole where none has existed before. He could not, we think, make a new hole in the middle of the street, if his cellars extended so far. In many instances, no doubt, such coal-holes may be of right as when they have been made when the houses were first built, and so as was suggested during the argument, the highway has been dedicated subject to such use . . . . It may be also that the almost universal uses of coal-holes may have led to their not having been complained of, as they might be, from their being regarded as a usual, if not a necessary, means of enjoying a house. They do not in any of these respects appear to be analogous to the case before us, for there is no evidence that the right here claimed originated in any reservation, nor is its exercise a matter of absolute necessity, nor is it ordinarily exercised by the owners of property except under Parliament powers, and subject to regulations imposed for the protection of the public. The case is not one of absolute necessity for the party or the public as in the case of a hoarding during the repairing of a house to protect the public, or in the case of putting a ladder against a house to chain-windows, or escape in case of a fire . . . . . We think therefore that the obstructions in question are indictable, and that the conviction was right; and the verdict must be entered accordingly.

As to what is a navigable river, see note on S. 283.

Mischief by causing inundation or obstruction to public drainage attended with damage.

432. Whoever commits mischief, by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by destroying or moving or rendering less useful a lighthouse or seamark, or by exhibiting false lights.

433. Whoever commits mischief by destroying or moving any lighthouse or other light used as a seamark, or any seamark or buoy or other thing placed as a guide for navigators, or by any act which renders any such lighthouse, seamark, buoy, or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Mischief by destroying or moving, &c., a landmark fixed by public authority.

434. Whoever commits mischief by destroying or moving any landmark fixed by the authority of a public servant, or by any act which renders such landmark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

The order of a Magistrate, directing that a portion of a fine inflicted under this Section be applied to defray the expenses of an Ameen deputed to restore the landmarks destroyed, is illegal—*Queen* v. *Moorat Lall and others*, 6 W. R., Cr. R., 93.

Mischief by fire or explosive substance with intent to cause damage to amount of 100 Rupees.

435. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred Rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Mischief by fire or explosive substance with intent to destroy a house, &c.

436. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The charge should state that the mischief was caused with the *intention* (or knowledge, &c.) of causing the destruction of a building—3 W. R., Cr. L., 18, No. 688, 1865.

The building should be described as one of the kind mentioned in the text, and not simply as a "building"—*Queen* v. *Durbarro Polie*, 8 W. R., Cr. R., 30.

The punishment inflicted for an offence should not depend solely on the amount of mischief caused, but should also be guided by the danger of destruction of property which might have ensued from the act—8 W. R., Cr. L., 14, No. 812, 1867.

A is accused of burning down his own house in order to obtain money for which it is insured. The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and that after each of which fires, A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental. (Act I, 1872, Illustration (*a*), S. 15.)

Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.

437. Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for the mischief described in the last Section when committed by fire or any explosive substance.

438. Whoever commits or attempts to commit by fire or any explosive substance, such mischief as is described in the last preceding Section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Running vessel ashore with intent to commit theft, &c.

439. Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein, or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Mischief committed after preparation made for causing death, or hurt.

440. Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

OF CRIMINAL TRESPASS.

Criminal trespass.

441. Whoever enters into or upon property in the possession of another with intent to commit an offence, or to intimidate, insult, or annoy any person in possession of such property; or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person or with intent to commit an offence—is said to commit "criminal trespass."

Property in the possession of another.—The nature of the possession has been the subject of some discussion. In the *Queen* v. *Ram Dyal Mundle,* 7 W. R., Cr. R., 28, it was held that the Magistrate should look to possession only without reference to the question in whom the title to the property may be ultimately found. Subsequently Jackson, J., overruling the opnion of Markby, J., decided that a Magistrate ought not to decline to go into a case of trespass merely because the complainant did not make out his title to the land, and that the offence may be committed on property in a person's possession, though such possession may not have originated in right—*Queen* v. *Sur Wan Singh,* 11 W. R., Cr. R., 11.

The possession must be actual possession. So where A, after B's death, entered into and took possession as of right of a house in which B formerly resided, but vacated a few days before her death, Held, this Section did not apply to constructive possession—*Iswar Chandra Kurmakar* v. *Setal Das Mitter,* 8 B. L. R., App., 62.

CHAP. XVII. S. 441.

With intent to commit an offence.—Where a person entered a house with a forged warrant of arrest, and under the color of it took away one of the inmates, he was held guilty of house-trespass—*Queen* v. *Nand Mohun Sircar*, 12 W. R., Cr. R., 53. So where a person entered on another's property and cut down trees there, it was considered sufficient—*Queen* v. *Janub Beba*, 1 W. R., Cr. R., 46. But where persons were convicted for driving their carts across an open green, in violation of an order issued by Municipal Commissioners, the conviction was set aside, as it did not appear that the Commissioners had power to pass such an order, and breaking it was not an offence—5 Mad. R., 38.

The word "offence" has the same meaning when the thing is punishable under a local or special law with six months' imprisonment or upwards—S. 2, Act XXVII of 1870.

Or to intimidate, insult or annoy.—Where the entry is not with any of the intentions given above, criminal trespass is not committed. So an entry simply in assertion of a *bonâ fide* claim of title is not criminal trespass—*Gokul Chund* v. *Seikh Roshun Lall*, 2 N. W. R., R., 82. So where a person entered on land out of which he was turned in execution of a declaratory decree, it was held that since he was improperly ejected, he was not of criminal trespass, and though he might be guilty of resisting a lawful order—6 Mad. R., 19. So where defendants claimed a prescriptive right to fish in a lake, free of rent, and C had failed to show that they were his tenants, it was decided that by entering and fishing they were not guilty of criminal trespass as regards C—*Sristeedhur Paroee* v. *Indrobhosan Chuckerbutty*, 18 W. R., Cr. R., 25. So where a person accompanied a peon from a Moonsiff's Court in execution of a decree against a judgment-debtor, and entered a house at the peon's request to bring out property alleged to belong to the judgment-debtor, he was not deemed guilty of criminal trespass—*Queen* v. *Chooramani Sant*, 14 W. R., Cr. R., 25.

Mere proof that the defendant erected a fence in a hollow drain between his land and that of the prosecutor—*Queen* v. *Kalinath Nag Chowdry*, 9 W. R., Cr. R., 1, or of entering on and cultivating government waste lands without permission—4 Mad. J., 285, No. 440, 1869, or of entering an exhibition building without having purchased a ticket—*Reg.* v. *Mehervanji Bujanji*, 6 Bom. R., Cr. Ca., 6, without special proof of intention, has not been considered sufficient for conviction.

Where defendants were convicted under S. 447 for cultivating village waste land, which they had been ordered by the Collector to refrain from cultivating, the conviction was upheld on the grounds that the waste land in a village admittedly belongs to Government, and the Collector was empowered to order that it should not be cultivated, and hence defendant entered to commit an offence under S. 186—5 Mad. R., 17.

Where defendant enclosed and commenced to cultivate a portion of a burial ground, it was held that the person corporate in possession was that portion of the public entitled to use it, and as defendant was not one of them, he was guilty of criminal trespass, since no act could be more calculated to cause annoyance to the people than ploughing their graveyard—6 Mad. R., 25. But where defendant was convicted for including in his own land a portion of a public footpath, the conviction was set aside on the ground that defendant being one of the public entitled to use the path, he could not be said to have entered on the property of another with the necessary intent—6 Mad. R., 26.

One member of a joint family does not commit trespass by entering the joint house, but he is guilty of criminal trespass if he enters a room ordinarily occupied by another member of the family with any of the intentions mentioned in this Section—*Pran Kisto Chunder, Petitioner*, 15 W. R., Cr. R., 6; 6 B. L. R., App., 80.

By Ss. 2 and 5, Act I, 1866 (B. C.), any person keeping a ferry boat for the purpose of hire within two miles above or below the ferry is guilty of criminal trespass.

House-trespass.

442. Whoever commits criminal trespass by entering into or remaining in any building, tent, or vessel, used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass."

Explanation 1.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

A large circular receptacle for grain opening at the top, and situated in back yard, is not "a place used for the custody of property"—Mad. H. Ct., 1865.

Lurking house-trespass.

443. Whoever commits house-trespass, having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent, or vessel which is the subject of the trespass, is said to commit "lurking house-trespass."

Lurking house-trespass by night.

444. Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night."

House-breaking.

445. A person is said to commit "house-breaking," who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:—

First.—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly.—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation.—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this Section.

Illustrations.

(*a.*) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(*b.*) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(*c.*) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(*d.*) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(*e.*) A commits house-trespass by entering Z's house through the door having lifted a latch by putting a wire through the hole in the door. This is house-breaking.

(*f.*) A finds the key of Z's house-door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(*g.*) Z is standing in his door-way. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(*h.*) Z, the door-keeper of Y, is standing in Y's door-way. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

Entering a house by scaling a wall is house-breaking—*Queen* v. *Emdad Ally*, 2 W. R., Cr. R., 65.

House-breaking by night.

446. Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night."

Punishment for criminal trespass.

447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.

See note under S. 441.

Punishment for house-trespass.

448. Whoever commits house-trespass, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand Rupees, or with both.

House-trespass in order to the commission of an offence punishable with death.

449. Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to the commission of an offence punishable with transportation for life.

450. Whoever commits house-trespass in order to the committing of any offence punishable with transportation for life, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to the commission of an offence punishable with imprisonment.

451. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

Punishable with whipping if the offence intended to be committed is so punishable, and as an additional punishment for a second offence Ss. 2 & 4, Act VI, 1864. See note under S.441.

House-trespass after preparation made for causing hurt to any person.

452. Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Punishment for lurking house-trespass or house-breaking.

453. Whoever commits lurking house-trespass or house-breaking shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Where a person was taken outside a shop, and the door of the shop was found broken open, he was convicted of house-breaking—*Queen* v. *Kinaram Bowa*, 4 W. R., Cr. R., 14.

Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.

454. Whoever commits lurking house-trespass or house-breaking in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of

either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be convicted under this Section and S. 497, but not sentenced to more punishment than if convicted under S. 497 only. (*Illus.*, S. 454, Cr. Pro. Code.) See note under S. 457.

Whipping can be awarded if the offence intended to be committed is so punishable, and as an additional punishment for a second offence. (Ss. 2 & 4, Act VI of 1864.)

Lurking house-trespass or house-breaking after preparation made for causing hurt to any person.

455. Whoever commits lurking house-trespass or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for lurking house-trespass or house-breaking by night.

456. Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.

457. Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

Accused was found in complainant's house at night, but stated that he was there for the purpose of carrying on an intrigue with complainant's wife. Complainant refused to lay a charge of house-trespass in order to commit adultery. Held, the Magistrate was right not to convict of a charge the husband refused to make. (5 Mad. R., 5.)

The charge should state the offence with a view to the commission of which the trespass was caused. (2 W. R., Cr. L., 13, No. 1119, 1864.)

Separate convictions under this Section and S. 379 on the same facts are not now illegal, as laid down in *Jogeen Pullee* v. *Nobo Pullee*, 6 W. R., Cr. R., 49.

But it should be borne in mind that, under the Code, house-breaking and lurking house-trespass are considered as simple offences, and committing theft, or any other offence at the same time, is not looked upon as a separate offence, but rather as an aggravation of the major offence. So a person convicted of

house-breaking at night immediately followed by theft, is, properly speaking, only guilty of a single offence under this Section—1 W. R., Cr. L., 5, No. 1042, 1864; *Queen* v. *Tonakooch*, 2 W. R., Cr. R., 68; *Queen* v. *Chytun Bowree and others*, 5 W. R., Cr. R., 49. So the Bombay High Court has held that, under S. 435, Cr. Pro. Code, house-breaking by night in order to commit theft, and theft in a dwelling-house, are, for the purposes of punishment, to be regarded as one; and therefore, upon conviction of these offences, a double sentence of imprisonment for one offence and whipping for the other cannot be legally inflicted.

As to when whipping may be awarded, see Ss. 2 & 4, Act VI, 1864.

Lurking house-trespass or house-breaking by night after preparation made for causing hurt to any person.

458. Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Where the facts proved amount to an offence under this Section or S. 459, a conviction under S. 380 is not now illegal as declared in *Puran Telee* v. *Bhuttoo Dome*, 9 W. R., Cr. R., 5.

Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

459. Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall be punished with transportation for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c.

460. If at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

A house-breaker, when about to be captured by the owner of the house, stabbed the owner with a *sindkati*, and got off, the High Court held that as a *sindhkati* was a dangerous weapon; the house-breaker was guilty of attempting to cause grievous hurt—*Queen* v. *Lukhun Dass*, 2 W. R., Cr. R., 52.

Dishonestly breaking open any closed receptacle containing or supposed to contain property.

461. Whoever dishonestly or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for same offence when committed by person entrusted with custody.

462. Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

Forgery.

463. Whoever makes any false document or part of a document with intent to cause damage or injury to the public, or to any person, or to support any claim, or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

The unauthorized use of another person's name even as agent with a fraudulent intent is forgery. So where one Gyanee Ram fraudulently signed a vakalutnama "Golab Ram by the pen of Gyanee Ram" without authority, he was convicted—*Queen* v. *Gyanee Ram*, 6 W. R., Cr. R., 78.

Making a false document.

464. A person is said to make a false document,

First.—Who dishonestly or fraudulently makes, signs, seals, or executes a document or part of a document or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by, or by the authority of a person by whom or by whose authority he knows that it was not made,

signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

Secondly.—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof after it has been made or executed either by himself or by any other person whether such person be living or dead at the time of such alteration; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him he does not know the contents of the document or the nature of the alteration.

Illustrations.

(*a.*) A has a letter of credit upon B for 10,000 Rupees written by Z. A, in order to defraud B, adds a cypher to the 10,000 and makes the sum 100,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(*b.*) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase-money. A has committed forgery.

(*c.*) A picks up a cheque on a banker signed by B payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand Rupees. A commits forgery.

(*d.*) A leaves with B, his agent, a cheque on a banker signed by A without inserting the sum payable, and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand Rupees for the purpose of making certain payments. B fradulently fills up the cheque by inserting the sum of twenty thousand Rupees. B commits forgery.

(*e.*) A draws a Bill of Exchange on himself in the name of B without B's authority, intending to discount it as a genuine Bill with a Banker, and intending to take up the Bill on its maturity. Here, as A draws the Bill with intent to deceive the Banker by leading him to suppose that he had the security of B, and thereby to discount the Bill, A is guilty of forgery.

(*f.*) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B, and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(*g.*) A endorses a Government Promissory Note and makes it payable to Z or his order by writing on the Bill the words, "Pay to Z or his order," and signing the endorsement. B dishonestly erases the words "Pay to Z or his order," and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(*h.*) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his state, executes a conveyance of the same estate to B dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(*i.*) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(*j.*) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(*k*) A, without B's authority, writes a letter and signs it in B's name, certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by the forged certificate and thereby induce Z to enter an expressed or implied contract for service.

Explanation.—A man's signature of his own name may amount to forgery.

Illustrations.

(*a.*) A signs his own name to a Bill of Exchange, intending that it may be believed that the Bill was drawn by another person of the same name. A has committed forgery.

(*b.*) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a Bill of Exchange drawn by B upon Z and negociate the Bill as though it had been accepted by Z. A is guilty of forgery; and if B knowing the fact draws the Bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(*c.*) A picks up a Bill of Exchange payable to the order of a different person of the same name. A endorses the Bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable: here A has committed forgery.

(*d.*) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period. and dates the lease six months prior to the seizure with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(*e.*) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit and with intent to defraud his creditors, and in order to give a color to the transaction, writes a Promissory Note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration.

A draws a Bill of Exchange upon a fictitious person and fraudulently accepts the Bil in the name of such fictitious person with intent to negociate it. A commits forgery.

False document.—To support a charge of forgery, the offender must be proved to have made a false document with one or other of the intentions stated in this Section. So it has been held that the mere fraudulent preparation of a deed with intent to cause injury to certain persons is not forgery unless the document is a false document—5 W. R., Cr. L., 2, No. 157, 1866.

In the case of the *Queen* v. *Fatic Biswas*, MSS., July 1868, defendant was convicted of using a forged document, *viz.*, a *wrong* copy of an original copy filed in a Civil Court, on the grounds that he had filed it in a civil suit in which he was a party. The High Court did not consider such a copy a false document, and released the defendant, holding as follows:—

"It purports to be a copy of certain original measurement chittas which are said to be filed in the Judge's *serishta*, and it is signed as a true copy by certain officers of that *serishta*. These persons give evidence in Court that they did in fact sign it, and although there is further evidence to show that this document is not a correct copy of the original, still there is nothing whatever on the record as far as we can discover which tends to prove that it is pretended to be made or signed by anybody other than those by whom it is in fact made and signed, and consequently it cannot fall within the definition of forgery, which is given in the Penal Code, unless, on the facts of the case, it appears that the persons who made it and signed it were induced to do so by fraudulent representations to the effect that what they were making and signing was something other than it really was . . . . It may be that the document has been fraudulently used by some person as a copy of that which it is not a copy; but that in itself does not constitute forgery. So in the case the *Queen* v. *Nujeebutoollah*, 9 W. R., Cr. R., 20, it was considered very doubtful whether a document on which the signature was genuine was a false document, the signature having been obtained by inserting the document in a heap of papers placed for signature before the person

signing it, on the grounds that no deception was practised on him to prevent him knowing the nature of the document. So where a mohurrir in a Registration office was convicted of forgery for making false endorsements on the back of certain deeds, which endorsements were signed by the Registrar, it was held that the conviction could not be upheld, as it was not shown that the Registrar, in consequence of deception practised on him by the accused, did not know the contents of the document he was signing—*Reg.* v. *Dwarkanath Ghose*, 20 W. R., Cr. R., 49.

Making document in which the maker falsely describes himself or misrepresents his position does not amount to forgery. So where a person made a jammabundee purporting to be drawn out and signed by "Gunput Lall Putwaree," and it was proved Gunput Lall was not a putwaree when he executed the document, Held, he was guilty not of forgery but of cheating under s. 415—*Joy Kuree Sing, petitioner*, 21 W. R., Cr. R., 41.

When defendant got A to sign a blank receipt, and filled it up for 19 rupees 8 annas, it was held that whether the document was false or not, depended on the fact whether authority had been given to fill it up with 19 rupees 8 annas or not"—*Queen* v. *Ramgopal Dhur*, 10 W. R., Cr. R., 7.

Where A, in a suit for possession of land, to support his pedigree, put in evidence a deed of dower, and a copy of a deed of security purporting to be true copies of the original documents filed with the City Cazee, and it was found that the copies contained the names of two more witnesses than the original, it was urged that S. 463 did not apply to copies. Sir B. Peacock, C.J., delivering the ruling of a Full Bench, said, S. 463 is as follows:—"Whosoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with any property, or to enter into any express or implied contract, or with intent to commit fraud, or that fraud may be committed, commits forgery." We regard the forgery of a copy clearly to come within the purview of the Section just cited. Forgery of a copy, which was no true copy, would be the offence here rendered penal; and the criminal intention to make a false document serve the purpose of a true would be clear by such an act of forgery—*Issur Chunder Dutt* v. *Baboo Pran Nauth Chowdry*, Mars. R., 270.

A person cannot be guilty of forgery unless the document is made by him. So where A made a false document at the instigation of B, it was held that B could at best be only guilty of abetment of forgery—*Queen* v. *Ramgopal Dhur*, 10 W. R., Cr. R., 7.

With intent to cause damage, &c.—Simply making a false document without the intention referred to above is not forgery—3 W. R., Cr. L., 18, No. 689, 1865. So where prisoner having tendered security on plain paper was ordered to furnish it on stamp-paper, and he then copied the bond including the witnesses on a paper of proper value, which he afterwards gave to the surety for signature, he was acquitted by the Nizamut Adawlut of forgery, as he had no fraudulent intent in committing the act—*Government* v. *Dureauve Singh*, N. A. R., 1854, 95. So where prisoner intending to screen his own negligence, altered an office report, he was held not to be guilty of forgery—*Queen* v. *Lal Gamul*, 2 N. W. R., 11.

Where the requisite intention exists, the simple making of a false document completes the offence. There is no necessity that it should be published. So where prisoners were found in the act of writing a false document in the name of a fictitious person, accusing B of murder, with the object of extorting money from B, they were held guilty of forgery—*In re Sherfoit Ally*, 10 W. R., Cr. R., 61.

The intention must exist at the time of making the false document. So, in England, it has been held that to support a forgery, there must be proof that at the time of making the false document, there was an intention to defraud—*Reg.* v. *Hodgson*, 7 Cox Cr. Ca., 125. So where prisoner fraudulently used the name of another person for the purposes of trade, and afterwards accepted a bill in that name, Held, that he could not be convicted of forgery, unless

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when he first assumed the fictitious name he contemplated the making of that particular bill, and that it would not be sufficient to show he assumed the false name for the purpose of fraud generally; it must be taken for the specific object of passing the bill—*Reg.* v. *White*, 5 Cox Cr. Ca., 291.

The intention is a matter of direct proof or of inference from the facts of the case. Where A signed a vakalatnama in the names of co-decree-holders without their authority, and delivered it to a vakeel with instructions to present a petition, stating that the debt had been paid, and praying that the case might be struck off the file, he was held to have committed forgery, as he did it in furtherance of a fraudulent arrangement with the judgement-debtor as against his co-decree-holders, to stop execution for a consideration to himself—*Queen* v. *Gauee Ram*, 6 W. R., Cr. R., 78. So where a Police officer in charge of an outpost, whose duty it was to enter the particulars of cattle impounded, received and entered 73 buffaloes, and on the following day after some conversation with the owners who came, he requested a subordinate to change the entry, and the subordinate not agreeing, changed the number himself from 73 to 13, held he was guilty of forgery under S. 471—*Queen* v. *Roghoo Barick*, 11 W. R., Cr. R., 44.

Abetment.—A person appealed to the Commissioner from an order of an assessor under Act XXI of 1867, filed stamp-paper for a copy of the assessor's decision after the period of appeal had elapsed, but on appeal averred that he had filed the stamp-papers before the period of appeal had elapsed, and fraudulently obtained a certificate to that effect, which was antedated, it was held that he was guilty of having abetted the commission of a forgery of a document—*Queen* v. *Sookmoy Ghose*, 10 W. R., Cr. R., 23.

Document.—A writing, which is not legal evidence of the matter expressed, may yet be a document under the last portion of S. 29 if the parties framing it believed it to be and intended it to be evidence of such matter—*Queen* v. *Shifait Ali*, 10 W. R., Cr. R., 6.

Punishment for forgery.

465. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The charge should not enter into a definition of the offence, but describe it as forgery—8 W. R., Cr. L., 7, No. 737, 1867.

A separate head of charge should be drawn up for each document—2 W. R., Cr. L., 18, No. 277, 1865.

In all cases of forgery sent up in appeal to the High Court, the forged document should be put up with the session record, and not with the record of the committing officer—*Queen* v. *Brorad Shahoo*, 7 W. R., Cr. R., 112.

It was held that, under S. 48, Act II, 1855, a comparison might be made of any suspected signature, writing or seal with any *undisputed* signature, writing or seal of the party; but that a comparison could not be made with any signature, writing or seal challenged by the prisoner—*Queen* v. *Amanoollah Mollah*, 6 W. R., Cr. R., 6; *Queen* v. *Gour Roy*, 8 W. R., Cr. R., 2; but this difficulty has been removed by S. 73, Act I, 1872, which allows a comparison with any signature, seal or writing, either admitted or proved to the satisfaction of the Court. A charge of forgery cannot be sustained unless the forged document is produced, and oral evidence of its appearance and contents is inadmissible—*Government* v. *Akbar Allee*, N. A. R., 1838, 112. It is very doubtful if this decision would be binding now, or how the exclusion of secondary evidence could be justified in every case where the forged document is not forthcoming.

Sanction.—By S. 469, Criminal Procedure Code, a complaint of an offence relating to documents described in Ss. 463, 471, 475 or 476 of this Code, when the document has been given in evidence in any proceedings in any Civil or Criminal Court, shall not be entertained against a party to such proceed-

ings except with the sanction of the Court in which the document was given in evidence or of some other Court to which such Court is subordinate.

By S. 470 of the same Code, the sanction may be expressed in general terms, and need not name the accused person; that the report or application of a Court shall be deemed a sufficient complaint, and sanction may be given at any time; and, if given under any one of Ss. 467, 468 or 469 of the Criminal Procedure Code, shall be sufficient authority for the Court to amend the charge to any offence mentioned in the other two Sections.

These Sections apparently limit the power to prosecute without sanction to cases in which the documents had been given in evidence in a Civil or Criminal Court, and a party to the proceedings is accused.

So where a document is given in before a Collector not sitting as a Revenue Court, which is as regards this Section considered a Civil Court—*Queen* v. *Bunsee Singh*, 1 W. R., Cr. R., 47—sanction to prosecute is not necessary—*Queen* v. *Gour Mohun Roy*, 8 W. R., Cr. R., 2. So sanction does not appear necessary when the document is not one offered in evidence as a *vakalutnama*—*Radha Jewan Mastafee, Petitioner*, 5 W. R., Cr. R., 8; *Queen* v. *Enayet Hossein*, 5 W. R., Cr. R., 43: nor, indeed, looking at the wording of S. 469, does it appear that sanction is necessary unless a party to the suit is prosecuted, and unless the offences are such as are described in the Sections given in it, so that abetments and attempts to commit those offences seem to be excluded.

Sanction may be either express or implied. So, when a Court before which the offence is committed, commits itself, its sanction must be implied—*Queen* v. *Goroo Churn Mojoomdar*, 2 W. R., Cr. R., 52.

The sanction may be general in its terms, but if a limited sanction is given, it cannot be exceeded—*Reg.* v. *Lubi Sani*, 8 Bom. R., Cr. Ca., 28.

Although the sanction may be given at any time, S. 469 of the Criminal Procedure Code declares that no complaint can be *entertained* without sanction, so that it would appear that though there is no limitation as to the period after which a prosecution may be sanctioned, it must be sanctioned before the complaint is laid. On this point, the rulings do not agree—*Queen* v. *Mohima Chunder Chuckerbutty*, 15 W. R., Cr. R., 45; *Queen* v. *Golah Singh*, 3 B. L. R., 10.

No appeal lies from the order of a Civil Court directing a prosecution for forgery—*Gunga Narain Sircar* v. *Azeezoonissa Beebee*, 5 W. R., Mis. R., 18. So where a specially registered bond was presented before a Judge for execution, which issued, but subsequently the Registrar of the Court sanctioned the prosecution of the decree-holder on the ground that the bond was a forgery, and the Judge on application made, without taking evidence or making further enquiry, set aside the decree and sanctioned the prosecution, Held the sanction was good; but the setting aside the decree was bad—*Queen* v. *Nawab Singh*, 3 Beng. R., Cr. C., 9.

A person was tried on a charge of forging a document A, and acquitted. In support of the charge, evidence was given in respect of another document B, which was also alleged to have been forged, and the prosecution chiefly based its case on the resemblance of the signature on both documents to an undisputed signature. Held (Markby, J., *dissenting*), that the acquittal in respect to the document A did not amount to an acquittal in respect of the document B—*Queen* v. *Dwarka Nath Dutt*, 7 W. R., Cr. R., 15.

Forgery of a record of a Court of Justice, or of a public Register of Births, power of attorney, &c.

466. Whoever forges a document, purporting to be a record or proceeding of or in a Court of Justice, or a Register of Birth, Baptism, Marriage, or Burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any pro-

ceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A document is a document *purporting* to be made by a public servant, notwithstanding the illegibility of the seal and signature on it, if it appears on the face of it to have come from a public servant—*Queen* v. *Prosunno Bose and two others*, 5 W. R., Cr. R., 96.

Forgery of a valuable security or will.

467. Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest, or dividends thereon, or to receive or deliver any money, moveable property or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property, or valuable security, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

To support a conviction, the forged document must be one of those mentioned in the text, and this should be stated in the charge—1 W. R., Cr. L., 9, No. 1093, 1864; 3 W. R., Cr. L., 7, No. 495.

Forgery for the purpose of cheating.

468. Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

The forging of a document which purports on the face of it to be a copy only, and which even if a genuine copy would not authorize the delivery of moveable property, is not punishable under this Section—*Reg.* v. *Naro Gopaul*, 5 Bom. R., Cr. Ca., 56.

The fraudulent alteration of a Collectorate challan is forgery of a document under this Section—*Queen* v. *Hurish Chander Bose*, W. R., 1844, Cr. R., 22.

Forgery for the purpose of harming the reputation of any person.

469. Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

"Forged document."

470. A document made wholly or in part by forgery is designated "a forged document."

Fraudulently using as genuine a forged document.

471. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

This Section does not specify the punishment, but declares that using a forged document shall be punished like forgery, and a charge for using a forged document should make mention of it coupled with one or other of Ss. 465, 466 or 467, according to the nature of the document forged—1 W. R., Cr. L., 10, No. 1099, 1864; 3 W. R., Cr. L., 8, No. 512, 1865.

The definition of forgery should not be entered in the charge, simply describing the offence as one of using a forged document is sufficient—8 W. R., Cr. L., 7, No. 737, 1867.

"*Fraudulently or dishonestly.*"—Merely using a forged document as genuine is not an offence, unless is done fraudulently or dishonestly. So where a person filed documents in which some dates were erased and others inserted, but no bad motive was proved, a conviction for using was set aside—*Queen* v. *Jaha Bux*, 8 W. R., Cr. R., 81. So when a person, who could neither read nor write, filed a false document which he said was a bond, returned to him by his mahajun on paying the loan, it was held the evidence of intention was insufficient—17 W. R., Cr. R., 32; *Queen* v. *Bholay Poramanick.*

By the law of England, the knowledge or intent with which a forged document is altered may be shown by proof of previous uttering (Ros., 89), and so by S. 15, Act I, 1872, where the question is whether an act was accidental or intentional, the fact that such act formed part of a series of similar acts, in each of which the person doing the act was concerned, is relevant. In the *Government* v. *Nurhurree Soovohee*, N. A. R., 1838, 105, prisoner was charged with using a forged *vakalutnama* bearing the names of three witnesses, who were alive, and denied their signatures, and evidence of the prisoner having previously failed in his object when the witnesses to the basis of his claim—a forged deed—were dead, was received to explain why the names of persons alive were used in the second case.

The mere filing a forged deed in Court, the party filing it being interested in establishing its contents is sufficient to raise the presumption that he filed it knowing it to be forged—*Government* v. *Bukhtawar*, N. A. R., 1826, 454.

"*Uses.*"—Presenting a document for registration is a sufficient using—*Queen* v. *Azimooddeen*, 11 W. R., Cr. R., 15.

Pending a settlement, certain cattle were left in care of A. Subsequently prisoner came with a document purporting to be an order to Futteh Ali, constable, informing him that, according to the order of the Huzzoor, he was to go to the spot and see that the cows were returned.

The order was sealed not corresponding to any known official seal, and on it was a scrawl by way of signature apparently an attempt to imitate the appearance of English writing; but illegible. Held, the evidence was sufficient to convict for using a forged document *purporting* to be made by a public servant in his official capacity—*Queen* v. *Prosonno Bose*, 5 W. R., Cr. R., 96.

A filed a document before a Moonsif in 1861, and on this coming to the notice of B, he, in 1863, sued A in the Court of the Principal Sudder Ameen to declare the document spurious. At first only a copy of a copy was produced; but subsequently, at the direction of the Principal Sudder Ameen, the original was brought into Court. Held, he was properly convicted for using the document before the Principal Sudder Ameen—*Queen* v. *Nujum Ali*, 6 W. R., Cr. R., 41.

A notification of the Bombay Government, dated 31st October 1866, allowed trial by jury at Poona for all offences for which, under Chapter XVIII, the punishment may be death, transportation for life, or transportation or imprisonment for a period extending to ten years and upwards. Accused was convicted by jury for fraudulently using a forged document as genuine, and the Court of Session, considering that the forged document to be of the nature of those specified in S. 467, sentenced him to ten years' imprisonment.

On appeal, the High Court held, the charge should have distinctly set forth the offence as that of using a forged document of the nature specified in S. 467 to give jurisdiction, as using as genuine a forged document not of the nature described in Ss. 466, 467 is only punishable with two years' imprisonment under S. 465, and hence not triable by a jury—*Reg.* v. *Gungaram Mala*, 6 Bom. R., Cr. Ca., 43.

Where a forged document is filed in a case, the using should be proved by producing the record. (MSS. case, Jessore, 1868.)

A uses a forged document in evidence in order to convict B, a public servant, of an offence under S. 167. A may be tried, convicted, and punished of offences under Ss. 471 (read with S. 466) and 196 of the Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under one of these Sections only.

Making or possessing a counterfeit seal, plate, &c., with intent to commit a forgery punishable under Section 467.

472. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under Section 467 of this Code, or with such intent has in his possession any such seal, plate, or other instrument knowing the same to be counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

If a person is found in possesion of counterfeit seals and instruments for making them, the presumption is that he has them with the intention of using them fraudulently—*Queen* v. *Kisto Soonder Deb*, 2 W. R., Cr. R, 5.

Making or possessing a counterfeit seal, plate, &c., with intent to commit a forgery punishable otherwise.

473. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any Section of this Chapter other than Section 467, or with such intent has in his possession any such seal, plate, or other instrument knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Where several seals of different descriptions were found in the possession of accused with intent to commit a forgery, held, there was a complete and distinct offence committed in respect of each seal, unless it appeared that

several such seals on their possession were for the purpose of committing one particular forgery—*Queen* v. *Goluck Chunder*, 13 W. R., Cr. R., 16; Illus. (*b*), Sec. 454, Cr. P. Code.

Having possession of a document known to be forged with intent to use it as genuine.

474. Whoever has in his possession any document knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine shall, if the document is one of the description mentioned in Section 466 of this Code, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in Section 467, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Where a person took a forged document into Court in connection with a case, but did not use it, he was convicted for having the document in his possession, intending to use it if necessary—*Queen* v. *Hatim Moonshee*, 8 W. R., Cr. R., 11.

Counterfeit seals and forged documents were found in the prisoner's possession, who gave no satisfactory account as to how he became possessed of them. It was inferred that he kept them with the intention of using them fraudulently—*Queen* v. *Kisto Soonder Deb*, 2 W. R., Cr. R., 5.

Counterfeiting a device or mark used for authenticating documents described in Section 467 or possessing counterfeit marked material.

475. Whoever counterfeits, upon or in the substance of any material, any device or mark used for the purpose of authenticating any document described in Section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A blank paper or a bond barred by limitation is not document of the kind described in Section 467—*Queen* v. *Rughoonundoo*, 15 W. R., Cr. R., 19.

Counterfeiting a device or mark used for authenticating documents other than those described in Section 467, or possessing counterfeit marked material.

476. Whoever counterfeits, upon or in the substance of any material, any device or mark used for the purpose of authenticating any document other than the documents described in Section 467

of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent has in his possession any material, upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulent cancellation, destruction, &c., of a will.

477. Whoever fraudulently or dishonestly or with intent to cause damage or injury to the public or to any person, cancels, destroys, or defaces, or attempts to cancel, destroy, or deface, or secretes or attempts to secrete any document which is or purports to be a will or an authority to adopt a son or any valuable security, or commits mischief in respect to such document, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

The mere destruction of a valuable security is not an offence. It must be done with fraud dishonestly, or with intent to cause danger or injury—4 W. R., Cr. L., 2, No. 898, 1865.

OF TRADE AND PROPERTY-MARKS.

Trade-mark.

478. A mark used for denoting that goods have been made or manufactured by a particular person or at a particular time or place, or that they are of a particular quality, is called "a trade-mark."

Property-mark.

479. A mark used for denoting that moveable property belongs to a particular person, is called "a property-mark."

Using a false trade-mark.

480. Whoever marks any goods or any case, package, or other receptacle containing goods, or uses any case, packages, or other receptacle with any mark thereon, with the intention of causing it to be believed that the goods so marked, or any goods contained in any such case, package, or receptacle so marked, were made or manufactured by any person by whom they were not made or manufactured, or that they were made or manufactured at any time or place at which they were

not made or manufactured, or that they are of a particular quality of which they are not, is said to use a false trade-mark.

Using a false property-mark.

481. Whoever marks any moveable property or goods, or any case, package, or other receptacle containing moveable property or goods, or uses any case, package, or other receptacle having any mark thereon, with the intention of causing it to be believed that the property or goods so marked or any property or goods contained in any case, package, or other receptacle so marked, belong to a person to whom they do not belong, is said to use a false property-mark.

Punishment for using a false trade or property-mark with intent to deceive or injure any person.

482. Whoever uses any false trade-mark or any false property-mark with intent to deceive or injure any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury.

483. Whoever, with intent to cause damage or injury to the public or to any person, knowingly counterfeits any trade or property-mark used by any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.

484. Whoever, with intent to cause damage or injury to the public or to any person, knowingly counterfeits any property-mark used by a public servant, or any mark used by a public servant, to denote that any property has been manufactured by a particular person or at a particular time or place, or that the same is of a particular quality, or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Fraudulent making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.

485. Whoever makes or has in his possession any die, plate, or other instrument for the purpose of making or counterfeiting any public or private property or trade-mark, with intent to use the same for the purpose of counterfeiting such mark, or has in his possession any such property or trade-mark, with intent that the same shall be used for the purpose of denoting that any goods or merchandize were made or manufactured by any particular person or firm by whom they were not made, or at a time or place at which they were not made, or that they are of a particular quality of which they are not, or that they belong to a person they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Knowingly selling goods marked with a counterfeit property or trade-mark.

486. Whoever sells any goods with a counterfeit property or trade-mark, whether public or private, affixed to or impressed upon the same or upon any case, wrapper, or receptacle in which such goods are packed or contained, knowing that such mark is forged or counterfeit, or that the same has been affixed to or impressed upon any goods or merchandize not manufactured or made by the person or at the time or place indicated by such mark, or they are not of the quality indicated by such mark, with intent to deceive, injure or damage any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Fraudulently making a false mark upon any package or receptacle containing goods.

487. Whoever fraudulently makes any false mark upon any package or receptacle containing goods, with intent to cause any public servant or any other person to believe that such package or receptacle contains goods which it does not contain, or that it does not contain goods which it does contain, or that the goods contained in such package or receptacle are of a nature or quality different from the real nature or quality thereof, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for making use of any such false mark.

488. Whoever fraudulently makes use of any such false mark with the intent last aforesaid, knowing such mark to be false, shall be punished in the manner mentioned in the last preceding Section.

Defacing any property-mark with intent to cause injury.

489. Whoever removes, destroys, or defaces any property-mark intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIX.

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

Breach of contract of service during a voyage or journey.

490. Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person, or any property, from one place to another, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits so to do, except in the case of illness or ill-treatment, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred Rupees, or with both.

Illustrations.

(*a.*) A, a palanquin bearer, being bound by legal contract to carry Z from one place to another, runs away in the middle of the stage. A has committed the offence defined in this Section.

(*b.*) A, a cooly, being bound by lawful contract to carry Z's baggage from one place to another, throws the baggage away. A has committed the offence defined in this Section.

(*c.*) A, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another, illegally omits to do so. A has committed the offence defined in this Section.

(*d.*) A by unlawful means compels B, a coolie, to carry his baggage. B in the course of the journey puts down the baggage and runs away. Here as B was not lawfully bound to carry the baggage, he has not committed any offence.

Explanation.—It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is legally made with any person, either expressly or impliedly, by the person who is to perform the service.

Illustration.

A contracts with a Dâk Company to drive his carriage for a month. B employs the Dâk Company to convey him on a journey, and during the month the Company supplies B with a carriage which is driven by A. A in the course of the journey voluntarily leaves the carriage. Here although A did not contract with B, A is guilty of an offence under this Section.

The words "voyage or journey" must be taken as qualifying the whole Section, and a contract for personal service to convey property from one place to another is not punishable. So the voluntary breach of a contract to convey Indigo from the fields, when it has grown, to the factory, is not an offence—*Queen* v. *Nowa Tewaree and Mullen Jha*, 6 W. R., Cr. R., 80.

A contractor not engaging personally to convey, but agreeing to cause anything to be conveyed, does not fall within this Section—*Queen* v. *Radhakanth Paul and Rambehary Dass Mohunt*, 9 W. R., Cr. R., 12.

The law only applies to such contracts as are *lawful*, and does not assist travellers on a voyage or journey who have impressed persons against their will. It does not meet the case of a menial servant quitting his master's service without notice while on a voyage.

The Madras High Court has decided that it does not apply to servants hired by the month.

If a contract is one of personal service on a person, it is dissolved by the death of either party. (Stone, 259.)

Breach of contract to attend on and supply the wants of helpless persons.

491. Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred Rupees, or with both.

But we conceive that Clause (491) may be improved in one respect. It seems, as it stands, not to be applicable to any but servants who have contracted specifically to attend upon the sick, insane, &c.; but we think it should be made to apply to servants who are, or ought to be, in attendance upon a sick or insane master, though they have only contracted in the ordinary way, while he was of sound body and mind; and to servants whether engaged specifically for the purpose or not who, by the lawful commands of their employers, has been ordered to take care of young children, and have not objected to do so. (Commrs.' 2nd Rep., S. 329.)

Breach of a contract to serve at a distant place to which the servant is conveyed at the master's expense.

492. Whoever, being bound by lawful contract in writing to work for another person as an artificer, workman or laborer for a period not more than three years at any place within British India, to which by virtue of the contract he has been or is to be conveyed at the expense of such other, voluntarily deserts the service of that other during the continuance of his contract, or without reasonable cause refuses to perform

the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description for a term not exceeding one month, or with fine not exceeding double the amount of such expense, or with both; unless it shall appear that the employer has ill-treated him or neglected to perform the contract on his part.

The contract must be a lawful contract; and if the person contracting is incapable of entering into a contract, such as a married English woman, she could not be convicted. A minor is not bound to carry out any contract as a rule unless it is beneficial to him, and in this case only he would appear to be liable. In the case of *Walls* v. *Scott*, 25 J. P, 215, an infant of 7 years of age was punished under a somewhat similar law for breach of a contract for six months' service, and the contract was considered beneficial and therefore good, although there was a stipulation in the contract that the master might keep a week's wages in his hands till the expiry of the engagement.

The words "artificer, workman, and labourers" include coolies—*Queen* v. *Gaur Gorah Cacharee and others*, 8 W. R., Cr. R., 6.

A gomastah of an indigo planter is not a workman. (N. A. Const., No. 924.)

A person once punished under this Section cannot be punished a second time on his refusal to complete the same contract on his release from the first term of imprisonment—2 W., 24, Cr. L., No. 611, 1863.

By S. 3, Cap. 34, 4 Geo. IV, it is enacted that "if any servant, &c., shall contract with any person to serve him, and shall not enter into his service according to his contract (such contract being in writing, and signed by the parties), or having entered into such service shall absent himself from his service before the term of his contract (whether such contract shall be in writing or not) shall be completed, or neglect to fulfil the same, &c., then it shall be lawful for any Justice of the Peace, on proof before him, to commit every such person to the House of Correction for a reasonable time not exceeding three calendar months, and to abate a proportional part of his wages for and during such period as he shall be so confined, or in lieu thereof to punish the offender *by abating* the whole or any part of his wages, or *to discharge him from his contract, which discharge shall be given under the hand and seal of the Justice, gratis.*" In the case of *Unwin and others* v. *Clarke*, L. R., 1866, Q. B., 417, defendant, a workman, entered into a contract with his master to serve him for a term of two years; he absented himself during the continuance of the contract, and was summoned before the Justices, convicted, and committed. After the imprisonment had expired, and while the term still continued, he refused to return to his master's service, and it was held by the Court of Queen's Bench on a case stated that, although the servant had not returned to the service, yet, as the contract continued, he had been guilty of a fresh offence, for which, notwithstanding his conviction and imprisonment, he could be again convicted. The Judges rested their judgments chiefly on the latter portion of the Section, which implies that the contract could not be dissolved at the option of one party except by the interference of the Justices, but such portions of them as depended on the general law of contracts are given as bearing on this Section. Blackburn, J. (Justice) held—"The contract is to serve for two years, and the servant stayed away from his work during a portion of the period he was to serve; that is certainly an absenting himself from his employment. The contract, however, having been previously broken in November, and the respondent after his liberation from prison in December not having come back to his work, the contention on his behalf is, that the first breach of contract put a complete end to the agreement. I think it clear in civil cases, that if there be a breach of contract accompanied with an intention of not proceeding further with it, it is at the option of the

person with whom the contract was made, to elect to rescind; but if there be a contract to serve for one year, and an action be brought during the year for a breach of it, damages may be recovered up to the commencement of the action, and afterwards a second action may be brought for a continuing breach of trust . . . . I think it would be hard upon the master, when he engages a servant for three years, if the servant could by being punished for his breach of the contract to get rid of it, and so by his wrongful act the master should lose his service for the rest of the time." Mellor, J. (Justice) said—"I am of the same opinion. The Act was passed to afford protection to masters. I think Mr. Quain is wrong in his contention, that only one offence under a contract is punishable under the Statute. His contention is not that the contract is at an end, but that after the servant has been once punished, the master is no longer under the protection of the Statute, but this is not so." On the other hand, Shee, J. (Justice) delivered as his judgment—"I think that on the proper construction of them (the two clauses of the section), a servant who absents himself from his service, declaring at the time that he will not return, commits an offence of the same degree as that of declining altogether to enter into the service, and that it cannot have been the intention of the legislature that he should be punishable only once for the latter offence, and *toties quoties* by successive imprisonments for the former. The Justices ought in such a case to take into their consideration that the person charged has declined absolutely to return to the service, and punish him once for all. It has been said that it is unreasonable that a second absenting from the service should not be punished as well as the first; but in my opinion the meaning of a man absenting himself is, that, being in the service, he departs from it. If he had returned to the service, and had left it again, he might have been punished again; but having originally declared he would never come back, I think his non-return was not a fresh absence, and that he was not punishable a second time."

CHAPTER XX.

OF OFFENCES RELATING TO MARRIAGE.

Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.

493. Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him, and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Marrying again during the lifetime of husband or wife.

494. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

That she, on or about ——, at ——, having a husband living, married again in a case in which the marriage was void by reason of its taking place during the lifetime of such husband, &c.—8 W. R., Cr. L., 9, No. 747, 1867.

By S. 4, Act XV, 1872, all marriages solemnized between parties, one or both of whom are Christians, are null and void unless performed.

1. By any person who has received episcopal ordination, provided the marriage is solemnized according to the rules, rites, ceremonies, and customs of the Church of which he is a minister.

2. By any clergyman of the Church of Scotland, provided that such marriage is solemnized according to the rules, rites, ceremonies, and customs of the Church of Scotland.

3. By a minister of religion licensed under the Act to marry.

4. By or in the presence of a Marriage Registrar appointed under the Act.

5. By any person licensed under Act to grant marriage certificates to Native Christians. And by S. 80 a certified copy of a certificate of any marriage solemnized under the Act is evidence of the validity of such marriage.

Among the Hindoos, there are 8 forms of marriage. The most usual forms are the *Brahmo*, where the girl is given by her father to a bridegroom he has selected; and *Asura*, in which the bridegroom pays the girl's father money. Mutual cohabitation is sufficient to establish a *marriage* (*Gandharva*) if corroborated by any act of the man—1 Strange Hin. L., 42; Mac. Hin. L., 63.

The peculiar custom of any Hindoo caste is not sufficient to set aside the Hindoo law. So it has been held that a custom of the Talapda Koli caste in Bombay, that a woman should be permitted to leave her first husband and contract a second marriage with another person during the lifetime of her first husband, and without his consent, is invalid as entirely opposed to Hindoo law, and that such marriage being void by reason of its taking place during the lifetime of such husband, the woman so married is liable to punishment under this Section—*Reg.* v. *Bhai Rupa*, 2 Bom. Rep., Cr. Ca., 117.

Among Mahomedans, marriage is a simple contract, and is performed if the parties are legally competent to contract, if the woman is a fitting subject, and they contract in the hearing of each other and in the presence of competent witnesses—Mac. M. L., 215; Bailie M. L., 4. The proper name for marriage is *nikah*. The term is, however, in Bengal, confined to second marriages, in oppositoin to *shadi*, which is commonly applied to the first marriage. There is, however, no difference between a *nikah* wife, and any other wife among the *Soonees*; but among the *Sheeahs* the term is applied to a sort of legal concubinage—4 W. R., Cr. L., 1, No. 503, 1865; *Queen* v. *Judoo Mussulmanee and Beedhy Bewah*, 6 W. R., Cr. R., 60.

By Act XV, 1865, Parsee marriages must be performed by a Parsee priest in the presence of two Parsee witnesses. The marriage must be registered, and the registers are proof of the entries contained in them.

This Section does not apply to Hindoo or Mahomedan males, who are allowed to marry more than one wife; but it applies to Hindoo and Mahomedan females and to Christians and Parsees of either sex—Act XV, 1865, S. 5.

The High Courts, on the Original Side, are enabled to decree a divorce which will enable the person to marry again, in cases where the marriage was null from the beginning as from impotency or relationship within the forbidden degrees—M.'s P. C., 315; and in addition to this, they and the Zilla Civil Courts can decree a dissolution of marriage between husband and wife of persons other than Mahomedans and Jews, who are repudiated on account of their conversion to Christianity or of Parsees—Act XXI, 1865; Act XV, 1865.

Mahomedan husbands are empowered, under certain circumstances, to divorce their wives at their own pleasure, without any judicial decree.

1. By repudiating a wife, and abstinence for three months.

2. By repudiating a wife three times, with intervals of a month between each repudiation; or by repudiating her three times in one period of purity either in a single sentence, or in different sentences.

3. By allowing the wife to purchase her freedom.

4. By making a vow of abstinence, and keeping it for four months.

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5. The marriage becomes dissolved by apostasy of either party—Mac. M. L., 219; Baillie M. L., 182, 302, 349.

Hindoos can apparently divorce their wives for adultery—1 Strange H. L., 45, 163; 2 Strange H. L., 39, 264.

To support a conviction, proof of the two marriages and of the identity of the parties is necessary. The proof of marriage required is much stronger than that required in civil cases. No presumption arises from the fact of the parties having lived together as man and wife, and an actual ceremony and valid marriage must be proved—Taylor, L. Ev., S. 140; Arch., 765. So by S. 50, Act I, 1872, when the Court has to form an opinion as to the relationship of one person to another, the opinion expressed by conduct as to the existence of such relationship of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact, provided that such opinion shall not be sufficient to prove a marriage in prosecutions under Ss. 494, 495, 497 or 498 of the Penal Code. If the first marriage is null or void from any cause, the charge cannot be sustained; but whether a conviction can be had, where the second marriage is void, though the ceremony performed is valid, is doubtful. In the case of the *Queen* v. *Bawn*, defendant was convicted, although the second marriage was void through the relationship of the parties—Ros., 294.

It would seem that the High Court at Madras have held differently. Defendant, originally a Hindoo, became a Roman Catholic, and married a woman according to the Christian forms. Afterwards he again became a professing Hindoo, and married a Hindoo woman according to Hindoo forms. He was prosecuted for bigamy; but acquitted on the following grounds:—"It seems impossible to assume that a man is not equally free to go from Hinduism to Christianity, and, if he pleases, back from Christianity to Hinduism.

"If then he is a Hindoo, although there is the greatest doubt whether the primitive Hindoo law authorized polygamy, it is impossible after the numerous decisions upon the subject to say that a second marriage of a Hindoo is void in consequence of a previous valid Hindoo marriage. It is manifest, therefore, that the second Hindoo marriage cannot be rendered void in consequence of a previous marriage which the Hindoo law would not have recognized it, not having been performed with any reference to its provisions. The ceremony could not make it a Hindoo marriage, because that was not a Hindoo ceremony, and the consensual contract could not make it a Hindoo marriage, because the consent was not to such a union, not to a very different one.

"If again, as it seems to me to be impossible to do, the man is to be treated as still a Christian, the union entered into with the Hindoo woman would not, in the view of any law governing Christian unions, be considered a marriage at all. In either point of view it seems impossible on the fact found to say that the prisoner has within the meaning of the Section contracted a marriage which is void in consequence of a previous marriage."—3 Ma. Rep., App., 7.

The first husband or wife is a competent witness in the mofussil—*Queen* v. *Khyroollah and others*, 6 W. R., Cr. R., 21.

Exception.—This Section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction; nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time; provided the person contracting such subsequent marriage shall before such marriage

takes place inform the person with whom such marriage is contracted, of the real state of facts so far as the same are within his or her knowledge.

A woman contracting a second marriage within the seven years is bound to show that she used all means in her power to inform herself of the death of her first husband—*Queen* v. *Enai Beebee*, 4 W. R., Cr. R., 25. *Primâ facie* proof of want of knowledge, *i.e.*, of not having heard, might be given by evidence of persons who having the same opportunity of knowledge as the prisoner had not heard of it—*Reg.* v. *Briggs*, 7 Cox, 77; but where it is proved that she has lived apart for more than seven years before the second marriage, it is incumbent on the prosecutor to show that during that time she was aware of her first husband's existence—*Queen* v. *John Curger Wen*, L., 1866, C. C. R., 1.

The rule regarding the proof necessary on the part of the prosecutor where the second marriage takes place within four years, is not settled in England. In the case of *Reg.* v. *Lumley*, 20 L. T. Rep., 454, it was held that it was incumbent on the prosecutor to prove that the husband or wife, as the case may be, was alive at the time of the second marriage, and that the existence of the party at an antecedent date may or may not, according to circumstances, afford a reasonable inference that he or she was alive at the time of the marriage. This has been greatly modified by a subsequent case—*Reg.* v. *Jones*, 21 L. T, 396—where it was held, that it was not necessary to prove affirmatively that, at the time of the second marriage, the prisioner knew that his first wife was alive, but that the Judge was right in charging the jury that they must be satisfied that the prisoner knew that his first wife was alive at the time of the second marriage. But it is a good defence if the prisoner, at the time of the second marriage, honestly and *bonâ fide* believed that his first wife was dead, and had reasonable grounds for so believing—*Reg.* v. *Turner*, 9 Cox, Cr. C., 145; *Reg.* v. *Huston*, 11 Cox, Cr. C., 670.

By S. 108, Act I, 1872, when the question is whether a person is alive or dead, and it is proved that he has not been heard of for seven years by those who would have naturally heard of him if he had been alive, the burden of proving that he is alive falls on the person asserting it.

Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.

495. Whoever commits the offence defined in the last preceding Section, having concealed from the person with whom the subsequent marriage is contracted the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Marriage ceremony gone through with fraudulent intent to induce cohabitation without lawful marriage.

496. Whoever, dishonestly or with a faudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Merely allowing a marriage to take place in one's house is not abetment of an illegal marriage—*Queen* v. *Kudam*, W. R., Sp. No., 13.

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This Section applies to cases in which a ceremony is gone through which would in no case constitute a marriage, and in which one of the parties is deceived by the other into the belief that it does constitute a marriage, or in which effect is sought to be given by the proceeding to some collateral purpose. Where the ceremony gone through does, but for the previous marriage, constitute a valid marriage, and both parties are aware of the circumstances of the previous marriage, S. 494 properly applies—Bom. H. Ct., July, 1873.

Adultery.

497. Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

That he, on or about ——, at——, committed adultery with ——, knowing or having reason to believe her to be the wife of——, and without the consent or connivance of the said——, and that, &c. 8 W. R., Cr. L., 5, No. 720, 1867.

He knows or has reason to believe to be the wife of another man.—Where prisoner was charged with adultery, and he proved that he had contracted a *nitri* with the woman that though she had not obtained a divorce from her husband, yet he refused to receive her into his house, and that the *nitri* was subsequently performed in the presence of several members of the caste, it was contended that the caste could dissolve the first marriage. Held, not guilty, as the jury did not find that the accused believe that the woman at the remarriage still continued the wife of the former husband—Note to *Reg.* v. *Manohar Baiji*, 5 Bom R., Cr. Ca., 17.

But it is not necessary for conviction that the accused should know whose wife she is. It is sufficient if it be shown that he knew she was a married woman—*Queen* v. *Madhub Chunder Giri*, 21 W. R., Cr. R., 13.

It is not necessary that there should be direct evidence of adultery. The same evidence is required as in a suit for divorce (*id.*).

By S. 478 of the Criminal Procedure Code, a charge of adultery must be instituted by the husband of the woman, or the person in whose care she is living at the time, and cannot be received if made by any other person, even the woman herself—3 W. R., Cr. L., 13, No. 643, 1865. The effect of this Section is disputed. In some cases, the High Court has held that, if the charge is once made, the husband is bound to go on with it, and cannot withdraw the case out of jurisdiction, though he is not guilty of any offence by compromising it—1 W. R., Cr. L., 1, No. 866, 1844; 9 W. R., Cr. L., 4, No. 1339, 1867; but in the case of the *Queen* v. *G. R. Smith*, 4 W. R., Cr. R., 31, it was held that the husband could not only compromise but withdraw the charge. The same point arose in the case of the *Queen* v. *Lieutenant Jones*, *Englishman* Report, July 8th, 1868, and Markby W. (Justice) held, that under S. 46, Act XVIII, 1862, which is similar to S. 478 of the Cr. Pro. Code, that "not only must the husband institute the charge, but he must express a wish that it should be proceeded with," and as the husband in the witness-box declined to prosecute, he discharged the accused. The same procedure has been approved of in Bombay—*Reg.* v. *Ramlo Jerio*, 5 Bom. R., Cr. Ca., 27; but not apparently in the North-West Provinces—*Queen* v. *Gumbhur*, 2 N. W. R., 234.

Before the introduction of the Penal Code, the procedure was the same; and in a case, where the original petition of complaint before the Magistrate charged the prisoner with having enticed and taken away his wife with

certain ornaments and clothes, and with illegally detaining them, and prayed for redress under Reg. VII, 1819, for taking away his wife for the purpose of making her a concubine or a prostitute, and afterwards, on questions by the Magistrate, was induced to prefer a charge of adultery, and to include the wife in the accusation, and the Magistrate committed them for trial, he was held to have acted irregularly, and the commitment was illegal—*Government* v. *Sheo Sing and Mussamut Jugnoo*, N. A. Rep., 1828, 177. But when in a trial for murder, defendant pleaded as a justification, adultery on the part of his wife (deceased) with another man, and the Magistrate swearing him to the truth of the charge, proceeded against the paramour, the Nizamut Adawlut held that it was sufficient, and that no separate petition of complaint was necessary. (N. A. Const., No. 1199).

Enticing or taking away or detaining with a criminal intent a married woman.

498. Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man from that man or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

A charge under this Section made by the woman herself, or by any other person than her husband, or by the person having charge of her on behalf of her husband, is inadmissible—Cr. Pro. Code, S. 178; 3 W. R., Cr. L., 13, No. 648, 1865.

Conceals or detains.—We are not, however, to be understood as deciding the case on the ground that physical constraint of the wife is an essential of the offence. We are quite of a different opinion; the words of the Section "conceals or detains" may and were, we think, intended to be applied to the enticing or inducing a wife to withhold or conceal herself from her husband, and assisting her to do so, as well as to physical restraint, or prevention of her will or notion, depriving the husband of his proper control over his wife for the purpose of illicit intercourse, is the first of the offence just as it is of the offence of taking away a wife under the same Section—see *Reg.* v. *Kumarasamy*, 2 M. H. C. Rep., 331; and a detention occasioning such deprivation may be brought about simply by the influence of allurements or blandishments—*Sundara Dass Tevan*, 4 Mad. R., 20.

Where a wife, who was deserted by her husband, went of her own free-will to live with another man, a conviction under this Section was set aside, as there was no enticing or taking away—*Queen* v. *Pochan Chung*, 2 W. R., Cr. R., 35.

But the fact that a woman went of her own accord has been held as insufficient to exonerate the man from punishment under this Section by the Madras High Court in the case of the *Queen* v. *Kumarasamy*, 2 Mad. Rep., 331. It was proved that the woman asked defendant to allow her to go with him; that all the solicitation proceeded from her; and that prisoner at first refused. The Court held, "now the Section and the preceding Section were evidently intended for the protection of husbands who alone can institute prosecutions for offences under them. It is the taking or enticing of the wife from the husband or the person having care of her on behalf of the husband for the illicit purpose that constitute the offence. If whilst the wife is living with her husband, a man knowingly goes away with her, in such a way as to deprive the husband of his control over her with the intent stated in the Section, that I think is a taking from the husband within the meaning of the Section. The

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wife's complicity in the transaction is no more material in a charge under this Section than it is in a charge of adultery." The first case would have properly fallen on the grounds that the husband deserted the woman.

A wife living in her husband's house, or in a house hired by him for her occupation and at his expense during his temporary absence, is considered to be in the charge of her husband—*Mutty Khan* v. *Mungloo Khansama*, 5 W. R., Cr. R., 50.

Formerly a person convicted under S. 487, could not be convicted on the same facts under this Section—*Queen* v. *Pochan Chung*, 2 W. R., Cr. R., 35. But now he can, provided the punishment awarded is not more than for one of the offences. (Illus., S. 454, Cr. Pro. Code).

CHAPTER XXI.

OF DEFAMATION.

Defamation.

499. Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of person as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation unless that imputation, directly or indirectly in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state or a state generally considered as disgraceful.

Illustrations.

(*a*.) A says—"Z is an honest man; he never stole B's watch;" intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the Exceptions.

(*b*.) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the Exceptions.

(*c*.) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the Exceptions.

First Exception.—It is not defamation to impute anything which is true concerning any person if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Imputation of any truth which the public good requires to be made or published.

"A person who has been guilty of gross acts of swindling at the Cape, comes to Calcutta and proposes to set up a house of agency. A person who has been forced to fly from England on account of infamous vices, repairs to India, opens a school, and exerts himself to obtain pupils. A captain of a ship induces natives of India to emigrate by promising to convey them to a country where they will have large wages and little work. He takes them to a foreign colony, where they are treated like slaves, and returns to India to hold out similar temptations to others. A man introduces a common prostitute as his wife into the society of all the most respectable ladies of the Presidency. A person in a high station is encouraging ruinous play among young servants of the Company. In all these cases we conceive that a writer who publishes the truth renders a great service to the public, and cannot without a violation of any sound principle be called a criminal.

"There are undoubtedly many cases in which spreading news of true reports prejudicial to the character of an individual would hurt the feelings of that individual without producing compensating advantage in any other quarter. The proclaiming to the world that a man keeps a mistress; that he is too much addicted to wine; that he is penurious in his housekeeping; that he is slovenly in his person; the taking up of ridiculous and degrading stories about the youthful indiscretions of a man who has long lived irreproachably as a husband and a father, and who has obtained some post which requires gravity, and even sanctity of character, can seldom produce any good to the public. (Penal Code Note R, 97.)

The remaining exceptions do not require that the imputation should be true, but only that it should be made in good faith. (Penal Code Note R, 102.)

Second Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character so far as his character appears in that conduct, and no further.

Public conduct of public servants.

By the second exception to S. 494 of the Indian Penal Code, it is declared that it is not defamation to express in good faith any opinion whatever respecting the conduct of public man in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct and no further, and by the 9th exception it is declared that it is not defamation to make an imputation upon the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good. These are provisions of the Criminal law; but the same rules ought to be applied to civil proceedings for defamation; and where a person would not be punishable under the Criminal law, he ought not to be liable to pay damages to the person upon whose conduct or character he has expressed an opinion or made an imputation.

But my view of the law is that founded merely upon the Penal Code, and I have referred to it rather by way of illustration than otherwise. Every subject has a right to comment on those acts on public men which concern him as a subject of the realm, if he does not make his commentary a cloak

for malice and slander. A writer in a public paper has a same right as any other person, and it is his privilege, if indeed it is not his duty, to comment on the acts of public which concern not himself only but which concern the public, and the discussion of which is for the public good. And where a person makes the public conduct of a public man the subject of comment, and it is for the public good, he is not liable to an action if the comments are made honestly, and he honestly believes the facts to be as he states them, and there is no wilful misrepresentation of fact or any mis-statement which he must have known to be a mis-statement if he had exercised ordinary care. This is in my opinion the rule to be derived from the many cases which have been decided in English Courts, and I have now to apply it to the publications of which the plaintiff has complained as being libellous—*E. J. Howard* v. *M. Mull*, 1 Bom. R., App.

Conduct of any person touching any public question.

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question and respecting his character so far as his character appears in that conduct, and no further.

Illustration.

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such a meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Publication of reports of proceedings of Courts of Justice.

Fourth Exception.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice is a Court within the meaning of the above Section.

Merits of a case decided in a Court of Justice; or conduct of witnesses and others concerned therein.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, Civil or Criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness, or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations.

(*a.*) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith; inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(*b.*) But if A says—"I do not believe what Z asserted at that trial, because I know him to be a man without veracity;"—A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's conduct as a witness.

Merits of a public performance.

Sixth Exception.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author, so far as his character appears in such performance, and no further.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations.

(*a.*) A person who publishes a book, submits that book to the judgment of the public.

(*b.*) A person who makes a speech in public, submits that speech to the judgment of the public.

(*c.*) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(*d.*) A says of a book published by Z. "Z's book is foolish, Z must be a weak man. Z's book is indecent, Z must be a man of impure mind." A is within this exception. if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(*e.*) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man, and a libertine." A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Censure passed in good faith by a person having lawful authority over another.

Seventh Exception.—It is not defamation in a person having over another any authority, either conferred by law, or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration.

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

"Again a master has clearly a right to change his servant *bonâ fide* for any supposed misconduct in his service and to give him admonition and blame; and the simple circumstance of the master exercising this right in the presence of another will not of necessity take away from him the protection of the law. Should it, however, appear in evidence that an opportunity had been sought for making such charge before third persons when it might have been made in private,—this fact alone would be strong in proof of a malicious intention and might deprive the master, if sued for defamation by his servant of that immunity which the law allows to a statement such as supposed when made with honesty of purpose." (Broome's Common Law, 749.)

There is no exception of any particular class in the Code. Under English law the Judge of the Court of Record is absolutely privileged in respect of any words spoken by him while hearing a case under any circumstances; but such a Judge in Madras not seem to have the same privilege—*Scott* v. *Stansfield*, 3 Mad. J., 401. See illustration above.

But in civil cases whatever immunity belongs to a Judge of one of the superior Courts at home in respect of words uttered by him whilst acting judicially, must be conceded to a Judge in this country. If a Judge is acting wholly without jurisdiction over the subject-matter with which he is dealing, he is not protected in respect of words then uttered by him just as he is not protected against the consequences of any act done or ordered to be done by him: but, for words spoken in his office, he is not liable to answer civilly or criminally, and this is probably a deduction from the principle that for what is done within jurisdiction, though irregularly and improperly done, a Judge shall not be liable in action; although his miscarriage may be so gross as to justify his removal by competent authority or his punishment by any of the extraordinary modes afforded by the constitution—*Moulavie Ally Kureem* v. *Teignmouth Sandys*, 1 Boulnois, 1. A Judge is therefore criminally responsible for acts which would give no cause for a civil action. This point was commented in the case of *Pralad Maha Rudra* v. *Watt*, 10 Bom. R., 348, as follows:—

"A Judge in fact, exercising the functions of adjudication and those immediately ancillary to it, represents the State. He is appointed by it, and, while acting within the province assigned to him, is responsible to the State alone for any abuse of the powers it has assigned to him. This accounts for what was insisted in as a strange anomaly, that a Judge should be criminally responsible at the same time that no suit for damages can be entertained against him. The State may prosecute and punish him for a grave dereliction of duty, at the same time that it will not allow him so long as he sits as its representative to be harassed by actions brought by disappointed suitors to whom, except mediately through it, he is under no legal obligation.

Accusation preferred in good faith to a duly authorized person.

Eighth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration.

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father; A is within this exception.

A Brahman wrote a letter to the Brahman community of the neighbourhood with a view to obtain the decision on a matter affecting his own religious interest and those of the community, *viz.*, whether a Brahman named had committed adultery with a "low caste woman." The Brahman did not prosecute; but a woman came forward and said she was referred to and complained; held it could not be found that the imputation was not made in good faith, and was privileged under this and Exception 10—*Reg.* v. *Kashinath Bacheji Bagul*, 8 Bom. R., Cr. Ca., 168.

Imputation made in good faith by a person for the protection of his interests in the management of his concerns or for the public good.

Ninth Exception.—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interests of the person making it or of any other person or for the public good.

Illustrations.

(*a.*) A, a shopkeeper, says to B, who manages his business, "Sell nothing to Z unless he pays you readymoney, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith, for the protection of his own interests.

(b.) A, a Magistrate, in making a report to his own superior officer, casts an imputation upon the character of Z. Here if the imputation is made in good faith and for the public good, A is within the exception.

A pleader or mokhtar, relying on the statements of his client, and in good faith introducing in a pleading a defamatory averment, will be protected for liability for defamation by this exception; but it is otherwise if the pleading is prepared by a person who has no such employment, and does not act in good faith—*Queen* v. *Chrestress*, 2 N. W. R., 473 So where a person in a suit against him, plea a statement defamatory of a third party, and it was found that he had not done so in good faith, it was held defamation—*Dr. Green* v. *J. P. Delanney*, 14 W. R., Cr. R., 27.

The report of an officer in the execution of his duty under his superior's orders, which contained defamatory imputations against others, but which did not appear to have been made recklessly or unjustifiably, does not amount to defamation, and is covered by this Exception—*Raj Narain Sein* v. *Deegobur Paul*, 14 W. R., Cr. R., 22: but where an Inspector of Police, who was sent to enquire if one Brijonath was a leader of dacoits, reported that it was false, and that the Banias of the village were striving to get him punished from ill-feeling; He added "I learnt from private enquiries that there is scarcely a woman in the houses of the Banias who has not passed a night or two with the defendant Brijonath." Held, that such a sweeping assertion was under the circumstance defamation—*Queen* v. *Raj Narain Sein*, 6 Beng. R., App., 42.

Caution intended for the good of the person to whom it is conveyed, or for the public good.

Tenth Exception.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed or of some person in whom that person is interested, or for the public good.

Making and publicly exhibiting an effigy of a person calling it by the person's name and beating it with shoes, are acts amounting to defamation—*Petumber Doss* v. *Dwarka Pershad*, 2 N. W. R., 433.

The gomasta of a guru or priest was convicted of defamation for having published a letter of his master ex-communicating the complainant from his caste. He stated that the complainant disobeyed his orders and treated him with disrespect. Held, the letter contained no expression defamatory. If the person who so acted was in a position entitling him to demand submission and to make non-submission an offence, then that position would render the communication privileged; and if not, then the mere statement that complainant did not obey one whom he was not bound to obey was not a defamatory imputation. (6 Mad. R., 47.)

There is no distinction between written and spoken defamation under the Code, and a verbal imputation amounting to defamation on the character of a person is punishable though made in anger and during the investigation of a case brought against the person making it by the person defamed, unless it had direct reference to or bearing on the offence of which he was charged—*Queen* v. *Mohunt Parsoram Doss*, 2 W. R., Cr. R., 36.

It is not necessary to show malice, or to enter into the question of what motive prompted the imputation being made. It is necessary and sufficient if the imputation is defamatory, and has been made with the requisite intention or knowledge (Commrs.' 2nd Rep., S. 385; P. Code, Note R, p. 101). On the question of intention, the Commissioners remark (2nd Rep., Ss. 400, 401):—"A charge of defamation must impute to the party accused the intention described in the defamation of the offence as inferrible from the circum-

stances to be given in proof. It will be for the party accused to allege any special circumstances by which the inference may be avoided, or to show that the alleged intent is not justly inferrible from the circumstances proved by the prosecutor. The English Criminal Law Commissioners say, "ignorance of the contents of a matter published by a party, or to the publication of which he was instrumental, must in principle be regarded as a sufficient legal excuse, provided the want of knowledge be not in itself wilful with a view to impunity, or otherwise culpable. In such cases the total absence of all criminal design or neglect ought to exempt from penal consequence. . . . . The journeyman printer may be acquitted of defamation, on the ground that setting the types for printing defamatory matter and so aiding towards the circulation thereof, he had not the intention described in the definition . . . . while the person who wrote the defamatory matter for printing, which the journeyman printer ignorantly set up in types, may be convicted, because it may be clear that his intention was to defame."

Punishment for defamation.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

The charge should simply describe the offence as defamation, and not negative the exceptions. (Illus., Ss. 439, 455.)

With regard to the *onus* of proof in defamation, the authors of the Code remark:—"If the defendant aver the truth of the imputations, complained of as defamatory, the Court ought to go into the question of the truth of the imputations (Penal Code, Note R, 98). And again (Penal Code, Note R, 103): "It will be proper to provide that a defendant who is accused of defamation, and who is on his defence on the truth of the imputation alleged to be defamatory, shall be held to strictly prove the substance of the imputation if the imputation be particular, and shall be compelled to descend to particulars in his plea, if the imputation be general." So it has been held that a Judge was not wrong in requiring an accused to prove the several distinct imputations contained in a libellous article published by him, with the same strictness with which he would be required to prove them if he were the defendant in a civil action—*Reg.* v. *Kikabhai Parbhudas*, 9 Bom. R., Cr. Ca., 451.

Good faith.—By S. 27, Act XVIII, 1862, in proving the evidence of circumstances as a defence under the 2nd, 3rd, 5th, 6th, 7th, 8th, 9th, or 10th Exceptions to S. 499, *good faith* is to be presumed unless the contrary appear. It has been decided that this Section only refers to the Original Side of the High Court, and does not extend to the mofussil, where the prosecutor is not bound to prove that the imputation was made in bad faith; but that it rests with the defendants to show that his statement was made with due care and caution—*Queen* v. *Ramnarain Bose*, 4 W. R., Cr. R., 22; *Shibnath Tulapattar* v. *Sat Cowree Deb*, 3 W. R., Cr. R, 198. And now by S. 105, Act I of 1872 (which however does not repeal S. 27 above referred to), the burden of proving the existence of circumstances bringing a case within any of the exceptions falls on the defendant.

A sues B for libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself. (Illus., S. 6, Act I of 1872.)

A sues B for a libel, imputing disgraceful conduct to A. B affirms that the matter alleged to be libellous is true. The position and relations of the parties at the time when the libel was published are relevant. But the particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B. (Illus., S. 9, Act I of 1872.)

A is accused of defaming B by publishing a libel. The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant as proving A's intention to harm B's reputation by the particular publication in question. The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant as showing that A did not intend to harm the reputation of B. (Illus., S. 14, Act I of 1872.)

A sues B for a libel exposed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved. (Illus., S. 32, Act I of 1872.)

Proof of despatch by post to a certain district by (A), of the paper containing the defamatory matter, is sufficient proof of publication by A in that district—*Queen* v. *Kallydoss Mitter and others*, 5. W. R., Cr. R., 49.

By S. 5, Act XXV of 1867, the printer and publisher of every periodical work containing public news, or any comments on public news, must appear before the Magistrate having jurisdiction and sign two declarations, that he is the publisher, or printer and publisher, of the periodical.

By S. 6 one of the declarations is to be deposited with the Magistrate and the other with the High Court, or other Court possessing ordinary civil jurisdiction in the place where the declaration is made. Inspection of the original may be obtained by payment of a fee of one rupee to the Court in which the original declaration is filed, and a copy of it is obtainable on payment of a fee of two rupees.

By S. 7 an attested copy of such declaration is *primâ facie* evidence capable of being rebutted that the declarant was printer and publisher, or printer or publisher, according to the terms of the declaration, of every portion of the periodical, whereof the title shall correspond with the title of the work mentioned in the declaration.

Printing or engraving matter knowing to be defamatory.

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Sale of printed or engraved substance containing defamatory matter.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory mater, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

CHAPTER XXII.

Of Criminal Intimidation, Insult, and Annoyance.

Criminal intimidation.

503. Whoever threatens another with any injury to his person, reputation, or property or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits Criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this Section.

Illustration.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of Criminal intimidation.

Insult intended to provoke a breach of the peace.

504. Whoever intentionally insults and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The difference between an offence under Section 504 and defamation may be exemplified thus:—In defamation publication to *the prosecutor alone* is not sufficient, as such an imputation could not be said to harm the reputation of the person; but here it would be—See *Reg.* v. *Brooke*, 7 Cox, 251.

The offence should be charged as Criminal intimidation (S. 439, Cr. Pro. Code).

Where the accused went to the complainant and told him that he had come from the sirkar, and that if he did not release his (complainant's) sister that he would get him six months' imprisonment. It was shewn that the sister was a woman of about 40 years of age, and was then detained in complainant's house. Held, this did not amount to criminal intimidation, as there was no threat of injury within the meaning of the Penal Code—*Reg.* v. *Moroba Bai Kerje*, 8 Bom. R., Cr. Ca., 101.

The offence does not depend on the sensitive feelings of the person complaining of the annoyance. It depends upon the calm, dispassionate opinion of the Judge whether the act complained of was, from its nature and the circumstances attending it, calculated to insult, and was done with the intention of insulting the complainant. (Commrs.' 2nd Rep., S. 425.)

False statements, rumours, &c., circulated with intent to cause mutiny, or offences against the public peace.

505. Whoever circulates or publishes any statement, rumour or report which he knows to be false, with intent to cause any officer, soldier or sailor in the Army or Navy of the Queen to mutiny, or

with intent to cause fear or alarm to the public, and thereby to induce any person to commit an offence against the State or against the public tranquility, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for criminal intimidation.

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or both; and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

If threat be to cause death or grievous hurt, &c.

If a person intimidates three persons at one time, he is liable to three separate convictions and sentences—*Goozar Khan, Petitioner*, 9 W. R., Cr. R., 306; Illus., S. 454, Cr. Pro. Code.

Criminal intimidation by an anonymous communication.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding Section.

Act caused by inducing a person to believe that he will be rendered an object of the divine displeasure.

508. Whoever voluntarily causes or attempts to cause any person to do any thing which that person is not legally bound to do, or to omit to do any thing which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or both.

Illustrations.

(*a.*) A sits Dhurna at Z's door with the intention of causing it to be believed that by so sitting he renders Z an object of divine displeasure. A has committed the offence defined in this Section.

(*b.*) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of divine displeasure. A has committed the offences defined in this Section.

Word or gesture intended to insult the modesty of a woman.

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Misconduct in public by a drunken person.

510. Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten Rupees, or with both.

CHAPTER XXIII.

OF ATTEMPT TO COMMIT OFFENCES.

Punishment for attempt to commit offences.

511. Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence for a term which may extend to one-half of the longest term of transportation or imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(*a.*) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this Section.

(*b.*) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this Section.

The charge should contain mention of S. 511 and the Section containing the punishment for the offence attempted to be committed. (1 W. R., Cr. L., 11, No. 1099, 1864.)

This Section does not apply to cases of attempts made punishable by some specific Section of the Code, such as an attempt to wage war, to commit murder, or culpable homicide not amounting to murder.

A person is, by Section 511 of the Indian Penal Code, declared liable to punishment if he *attempts to commit* an offence punishable by the Code with transportation or imprisonment, or to cause such offence to be committed, *and in such attempt does any act towards the commission of the offence.*

To constitute them the offence of attempt under this Section, there must be an act done with the intention of committing an offence, and for the purpose of committing that offence, and it must be done in *attempting* the commission of the offence.

Two illustrations of the offence of attempt as defined in this Section are given in the Code; both are illustrations of cases in which the offence has been committed. In each we find an act done with the intent of committing an offence and immediately enabling the commission of the offence, although it was not an act which constituted a part of the offence, and in each we find the intention of the person making the attempt was frustrated by circumstances independent of his own volition.

From the illustrations it may be inferred that the Legislature did not mean that the act done must be itself an ingredient (so to say) of the offence attempted, and in this respect there appears to me there is a noticeable difference between the definition given in the Section under consideration and that given in Section 307. To convict a person of an attempt to murder under Section 307, it must be shown that he has done some act with such intention, and that if *by that act* he caused death, he would be guilty of murder under Section 307, then the act necessary to constitute the attempt is an act which, if it had not fallen short of its object, would have constituted the offence attempted. Similarly to constitute an attempt under Section 308, the act proved must be an act which, had the results contemplated by the doer followed, would have completed the offence attempted, whereas, under the terms of Section 511, it is only necessary to prove an act done in the attempt *towards* the commission of the offence, and as the illustrations show an act in itself complete and not falling short of its object, or failing to bring about the result anticipated by the doer.

The circumstances stated in the illustrations to Section 511, Indian Penal Code, would not have constituted attempts under the English law, and I cannot but think that they were introduced in order to show that the provisions of Section 511, Indian Penal Code, were designed to extend to a much wider range of cases than would be deemed punishable as offences under the English law.

At the same time I do not hold that the provisions of this Section would extend to make punishable as attempts acts done in the mere stage of preparation. Although such acts are doubtless done towards the commission of the offence, they are not done *in the attempt* to commit the offence in the construction which I think should be put on the term "attempt" as used in this Section. I regard that term as here employed as indicating the actual taking of those steps which lead immediately to the commission of the offence, although nothing be done, or omitted, which of itself is a necessary constituent of the offence attempted—*Queen* v. *Ram Sahun Choubey*, 4 N. W. R., 46. So where prisoner presented an uncapped gun at E G. (believing the gun to be capped) with the intention of murdering him, Held, he could not be convicted under S. 307, but could under this Section—*Reg.* v. *Francis Cassidy*, 4 Bom. R, Cr. Ca., 17. So where accused dug a hole intending to place salt in it, in order that the discovery of the salt might be used in evidence against the prosecutor in a judicial proceeding, Held, he was guilty of an attempt to fabricate false evidence, since by digging the pit he did an act towards the commission of fabricating false evidence—*Queen* v. *Nundh*, 4 N. W. R., 133.

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Several acts of incendiarism took place in a village, occasioned by balls of rags with a piece of burning charcoal in it. A ball of the same description containing burning charcoal was found on prisoner at night, and concealed in his dress. The High Court held, but not unanimously, that he was guilty. Mitter (J.) dissenting said, that in order to support a conviction for attempting to commit an offence of the nature described in S. 511, it was not only necessary that the prisoner should have done an overt act towards the commission of the offence, but that the act itself (that is the overt act) should have been done in the attempt to commit it—*Queen* v. *Doyal Bawri*, 3 Ben. R., Cr., 55.

An attempt to commit an offence punishable with whipping, is not punishable with whipping. (2 W., 272, Cr. L., No. 425, 1867.)

A. was convicted of an attempt to commit rape, and sentenced to rigorous imprisonment for 7 years, which was afterwards commuted under S. 59 to transportation for the same term. Held, under Ss. 376, 511 of the Penal Code, a sentence to imprisonment for the offence committed could not be for a longer term than 5 years, and such sentence could not be commuted for a longer term under S. 59—*Queen* v. *Joseph Mariam*, 10 W. R., Cr. R., 10.

APPENDIX A.

ACT No. VI OF 1864.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 18th February 1864.)

An Act to authorize the punishment of whipping in certain cases.

Preamble.

WHEREAS it is expedient that in certain cases offenders should be liable under the provisions of the Indian Penal Code to the punishment of whipping; It is enacted as follows:—

Whipping added to the punishments described in Section 53 of the Penal Code.

I. In addition to the punishments described in Section 53 of the Indian Penal Code, offenders are also liable to whipping under the provisions of the said Code.

Offences punishable with whipping in lieu of other punishment prescribed by Penal Code.

II. Whoever commits any of the following offences, may be punished with whipping in lieu of any punishment to which he may for such offence be liable under the Indian Penal Code; that is to say:—

1. Theft, as defined in Section 378 of the said Code.
2. Theft in a building, tent, or vessel, as defined in Section 380 of the said Code.
3. Theft by a clerk or servant, as defined in Section 381 of the said Code.
4. Theft after preparation for causing death or hurt, as defined in Section 382 of the said Code.
5. Extortion by threat, as defined in Section 388 of the said Code.
6. Putting a person in fear of accusation in order to commit extortion, as defined in Section 389 of the said Code.
7. Dishonestly receiving stolen property, as defined in Section 411 of the said Code.
8. Dishonestly receiving property stolen in the commission of a Dacoity, as defined in Section 412 of the said Code.
9. Lurking house-trespass, or house-breaking, as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this Section.
10. Lurking house-trespass by night or house-breaking by night, as defined in Sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

A person who abets an offence punishable with whipping is liable to whipping, if the act abetted, *i.e.*, the offence punishable with whipping, is committed in consequence of the abetment. But he is not liable to whipping if the act done is different from the act abetted, and the former is not punishable with whipping. (2 W., 272, Cr. L., 425, 1864.)

An attempt to commit an offence punishable with whipping is not so punishable.—*id.*; *Yallee Valad Parsia*, 8 Bom. R., Cr. Ca., 37.

No appeal lies from a sentence to whipping only (s. 275, Cr. Pro. Code); and, in such case, the sentence should be carried out immediately; but when it is awarded as a punishment, it can only be inflicted as laid down in Section 9.

If a person is convicted at the same time of two or more offences, for one of which whipping can be awarded in lieu of, or as an additional punishment, it may be imposed with any other legal punishment for the other offence or offences. So where a person was convicted at one trial of theft, illegal confinement, and causing grievous hurt, it was held that a sentence of twenty stripes for the first offence; one month's imprisonment for

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the second, and for the third six months' rigorous imprisonment, was legal—*Muneruddin v. Gour Chunder*, 15 W. R., Cr. R., 88. But to support this the offences must be clearly distinct. So the Bombay High Court has decided that, as under Section 454, para. 3 of the Criminal Procedure Code, the offences of house-breaking by night in order to commit theft, and theft in a dwelling-house, are, for the purpose of punishment, to be regarded as one; therefore a double sentence of whipping for one offence and imprisonment for the other cannot be legally inflicted—*Reg.* v. *Gobinda bin Rama*, Bom. H. Ct., 11th December 1873.

Though a person is convicted at the same time of several offences punishable with whipping, and sentenced to suffer it, not more than 30 stripes on the whole can be inflicted—3 W. R., Cr. L., 2, No. 378, April 1865. Where the Lower Court awards imprisonment, the Appellate Court cannot convert it into whipping—4 W. R., Cr. Cir. 12, No. 1162, December 1865.

This Section and Sections 3 and 4 apply to juvenile offenders, as well as Section 5—*Reg.* v. *Jey Kissen Girdhar*, Cr. Ref., Bom. H. Ct., No. 125, 1873; *Reg.* v. *Kusa Walad Lakshman*, Bom. H. Ct., 17th November 1870.

In addition to those acts in this Section, offences under Section 29, Act XXII, 1864, are punishable with whipping.

On second conviction of any offence mentioned in last Section, whipping may be added to other punishment.

III. Whoever, having been previously convicted of any one of the offences specified in the last preceding Section, shall again be convicted of the same offence, may be punished with whipping in lieu of, or in addition to, any other punishment which he may for such offence be liable under the Indian Penal Code.

Previously convicted.—The manner of proving a previous conviction, and how it should be entered in the charge in order to justify an enhancement of punishment, will be found in Sections 326 and 429 of the Procedure Code.

The previous conviction must be for an offence under the Penal Code, and for such an offence as is specified in a particular Section. So a previous conviction under the law in force before the Penal Code (1st January 1862) will not bring an offender within this and the following Sections—2 W., 272, Cr. L., No. 425, 1864. So where a person was convicted of theft under Section 379 of the Code, and subsequently of theft in a house under Section 380, held, they were not the same offences—*Reg.* v. *Chundra Valad Shermia*, 7 Bom. R., Cr. Ca., 68; 5 Ma. R., 39. So "theft" and "receiving stolen property" are not the same offences—*Reg.* v. *Amarut Sheikh*, 4 W. R., Cr. Ca., 20.

The several High Courts are not agreed as to the meaning to be attached to the words "previously convicted." Both the Calcutta and Bombay Courts consider that this Section only applies to persons, who, having undergone punishment for a previous offence, are undeterred by it, and subsequently commit the same offence—*Reg.* v. *Udai Putnaik*, 12 W. R., C. R., 68. So the Bombay Court has held that the subsequent conviction must be for an offence *committed after* the prior conviction—*Reg.* v. *Sarya bin Kreshna Mandakar*, 3 Bom. R., Cr. Ca., 37; *Reg.* v. *Chandra Valad Shermia*, 7 Bom. R., 68. But the Madras Court considers that it is simply necessary to justify action under this Section that there should be a previous conviction irrespective of when the prior offence was committed, and that the Section does not require a previous conviction and previous punishment—5 Mad. R., App. xviii.

This Section applies to juvenile as well as adults—*Reg.* v. *Kusa Walad Lukshman*, Bom. H. Ct., 17th November 1870; *Reg.* v. *Jey Kissen Girdhar*, Cr. Ref., Bom. H. Ct., No. 125, 1873.

When whipping is awarded under this and the following Sections in addition to imprisonment, the whipping cannot be inflicted immediately after conviction, if the sentence be open to revision by a superior Court—Section 9: see 2 W., 248, Cr. L., No. 314, 1864.

Offences punishable, in case of second conviction, with whipping in addition to other punishment.

IV. Whoever, having been previously convicted of any one of the following offences, shall be again convicted of the same offence, may be punished with whipping in addition to any other punishment to which he may be liable under the Indian Penal Code; that is to say:—

1. Giving or fabricating false evidence in such manner as to be punishable under Section 193 of the Indian Penal Code.

2. Giving or fabricating false evidence with intent to procure conviction of a capital offence, as defined in Section 194 of the said Code.

3. Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment, as defined in Section 195 of the said Code.

4. Falsely charging any person with having committed an unnatural offence, as defined in Sections 211 and 377 of the said Code.

5. Assaulting or using criminal force to any woman with intent to outrage her modesty, as defined in Section 354 of the said Code.

6. Rape, as defined in Section 375 of the said Code.

7. Unnatural offences, as defined in Section 377 of the said Code.

8. Robbery or dacoity, as defined in Sections 390 and 391 of the said Code.

9. Attempting to commit robbery, as defined in Section 393 of the said Code.

10. Voluntarily causing hurt in committing robbery, as defined in Section 394 of the said Code.

11. Habitually receiving or dealing in stolen property, as defined in Section 413 of the said Code.

12. Forgery, as defined in Section 463 of the said Code.

13. Forgery of a document, as defined in Section 466 of the said Code.

14. Forgery of a document, as defined in Section 467 of the said Code.

15. Forgery for the purpose of cheating, as defined in Section 468 of the said Code.

16. Forgery for the purpose of harming the reputation of any person, as defined in Section 469 of the said Code.

17. Lurking house-trespass or house-breaking, as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

18. Lurking house-trespass by night, or house-breaking by night, as defined in Sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

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Whipping awarded under this Section is an additional punishment. It cannot be awarded in lieu of any other punishment to which the offender is liable—2 W., p. 247; Cir. No. 2, 1864. See notes on Sections 2 and 3.

When a person who has been "previously convicted" is convicted at one time of two or more offences, he may be punished with one, but only *one*, whipping *in addition* to any other punishment to which, under Section 46 of the Code of Criminal Procedure, he may be liable.

When a person is convicted at any one time of two or more offences, it is not illegal to sentence him to whipping on one of these offences *in addition* to imprisonment, or fine for the other or others—*Moniruddeen Shamadur* v. *Gour Chundra Shamadur*, 15 W. R. Cr. R., 89.

This Section applies to juvenile offenders—*Reg.* v. *Joy Kissen Gridur*, Cr. Rep., Bom. H. Ct., No. 128, 1873.

Juvenile offenders punishable with whipping for offences not punishable with death.

V. Any juvenile offender who commits any offence, which is not by the Indian Penal Code punishable with death, may, whether for a first or any other offence, be punished with whipping in lieu of any other punishment to which he may for such offence be liable under the said Code.

Whipping under this Section can be awarded for a first or any other offence, and only in lieu of other punishment—2 W., p. 248, Cir. No. 2, 1864. See Section 10.

When offences specified in Section 4 may be punished with whipping in frontier districts and wild tracts.

VI. Whenever any Local Government shall, by notification in the *Official Gazette*, have declared the provisions of this Section to be in force in any frontier district or any wild tract of country within the jurisdiction of such Local Government, any person who shall in such district or tract of country, after such notification as aforesaid, commit any of the offences specified in Section 4 of this Act, may be punished with whipping in lieu of any other punishment to which he may be liable under the Indian Penal Code.

Exemption of females.

VII. No female shall be punished with whipping; nor shall any person who may be sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years, be punished with whipping.

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VIII. Repealed by Act X, 1872.

Whipping, if awarded in addition to imprisonment, when to be inflicted.

IX. When the punishment of whipping is awarded in addition to imprisonment, by a Court whose sentence is open to revision by a superior Court, the whipping shall not be inflicted until fifteen days from the date of such sentence, or if an appeal be made within that time, until the sentence is confirmed by the superior Court: but the whipping shall be inflicted immediately on the expiry of the fifteen days, or, in case of an appeal, immediately on the receipt of the order of the Court confirming the sentence, if such order shall not be received within the fifteen days.

Mode of inflicting the punishment.

X. In the case of an adult, the punishment of whipping shall be inflicted with such instrument in such mode and on such part of the person as the Local Government shall direct; and in the case of a juvenile offender, it shall be inflicted in the way of school discipline with a light rattan. In no case, if the cat-of-nine-tails be the instrument employed, shall the punishment of whipping exceed one hundred and fifty lashes, or if the rattan be employed, shall the punishment exceed thirty stripes. The punishment shall be inflicted in the presence of a Justice of the Peace, or of an Officer authorized to exercise any of the powers of a Magistrate, and also, unless the Court which passed the sentence shall otherwise order, in the presence of a Medical Officer.

In the case of adults, whipping must be inflicted on the breech with a rattan not more than half an inch in diameter. Every precaution should be taken to prevent the blows falling on any other part of the person—2 W., p. 249, Cir. No. 2, 1864.

XI. Repealed by Act X, 1872.

The precaution of having a Medical Officer present at the time of inflicting the punishment should be observed in every instance when practicable—2 W., p. 249, Cir. No. 2, 1864. It is not necessary that the Civil Surgeon should be present at the whipping. A certificate from him as to the offender's fitness, and the presence of the Native Doctor, is sufficient.

XII. Repealed by Act X, 1872.

This Section refers to the Court by which a case is tried in the first instance and not to a Court of Appeal—*Reg.* v. *Bando Ali*, 15 W. R., Cr. R., 7.

ACT No. I OF 1866

PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

(Received the assent of the Lieutenant-Governor on the 6th February 1866 and of the Governor-General on the 26th February 1866.)

An Act to amend certain provisions of Regulation VI of 1819 (for rescinding Regulation XIX, 1816, and for enacting other provisions in lieu thereof.)

Preamble.

WHEREAS it is expedient to define more exactly the limits within which persons are prohibited from employing a ferry-boat plying for hire in the vicinity of a public Ferry, and also to provide some penalty for the wilful disregard of such prohibition; It is enacted as follows:—

Section VI, Regulation VI, 1819, repealed.

I. Section VI of Regulation VI of 1819 of the Bengal Code, so far as it relates to the Provinces under the control of the Lieutenant-Governor of Bengal, is hereby repealed.

II. Every Ferry which has been or may be declared to be a public Ferry under the provisions of the said Regulation VI of 1819, shall belong exclusively to Government, and no person shall, except with the sanction of the Magistrate of the District, keep a Ferry-boat, for the purpose of plying for hire within a distance of two miles above or below the place where such public Ferry is established.

Exclusive right to public Ferries vested in Government, and the employment of private Ferries within two miles prohibited.

III. On the requisition of the Magistrate of the District the person in charge of such public Ferry shall maintain at one or more places, in addition to the place at which the said public Ferry is established, and within two miles therefrom, such number of subsidiary Ferries as may seem to the said Magistrate to be necessary for the public convenience, and all the provisions of the said Regulation VI of 1819, in regard to the management of public Ferries, shall be deemed applicable to any subsidiary Ferry maintained under the orders of the Magistrate as aforesaid.

Provision for the establishment of subsidiary Ferries.

IV. All claims for compensation which may be preferred by any person or persons for any loss which may be sustained by them in consequence of any Ferry having been declared public as aforesaid, shall be enquired into by such Magistrate, who shall award compensation to any such person or persons who may appear justly entitled thereto. Such compensation shall be calculated upon an estimate of the annual net profit actually realized by such person or persons from such Ferry on an average of the five years next preceding such declaration, and shall in no case exceed the amount of fifteen times such net annual profit.

Claims for compensation how to be dealt with.

V. Any person who wilfully acts in contravention of the provisions of Section II of this Act, shall be liable to the punishment provided by Section 447 of the Indian Penal Code.

Penalty for acting in contravention of Section II.

ACT No. IX OF 1866.

PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

(Received the assent of the Lieutenant-Governor on the 30th April 1866, and of the Governor-General on the 31st May 1866.)

An Act for the more effectual punishment of persons resisting lawful apprehension or escaping from legal custody, after having been charged with or convicted of offences punishable only under some special or local law.

WHEREAS it is expedient to make provision for the more effectual punishment of persons resisting lawful apprehension or escaping from legal custody, where such persons have been charged with or convicted of offences punishable only under some special or local law: It is enacted as follows:—

Preamble.

I. If any person being charged with, or having been convicted of, an offence punishable under any special or local law, and which is not an offence punishable under the Indian Penal Code, shall intentionally offer any resistance or illegal obstruction to the lawful apprehension of himself for the offence with which he is so charged, or of which he has been convicted, or shall escape or attempt to escape from any custody in which he is lawfully detained for such offence, he shall be punished with simple imprisonment, or imprisonment with hard labor, for a term which may extend to two years, or with fine, or with both.

Persons resisting apprehension or escaping from lawful custody under charge or conviction of offence under local law to be punished.

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The punishment is in addition to the punishment for the original offence.

II. The punishment in the preceding Section is in addition to the punishment to which the person to be apprehended or detained in custody was liable for the offence under the special or local law with or of which he was charged or convicted.

Punishment of person offering resistance to lawful apprehension of other person charged with offence under local law, or rescuing such person.

III. Whoever intentionally offers any resistance to the lawful apprehension of any other person for an offence punishable under any special or local law, and not punishable under the Indian Penal Code, or rescues, or attempts to rescue, any other person from any custody in which that person is lawfully detained for any such offence as aforesaid, shall be punished with simple imprisonment or imprisonment with hard labor, for a term which may extend to two years, or with fine, or with both.

ACT No. XXXI OF 1867.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 26th June 1867.)

An Act to render penal certain offences committed by servants of Railway Companies.

Preamble.

WHEREAS it is expedient to extend certain provisions of the Indian Penal Code relating to public servants to persons in the employment of Railway Companies; It is hereby enacted as follows:—

Interpretation clause.

I. In this Act "Railway" Company means the proprietors for the time being of every railway or tramway situate in the territories vested in Her Majesty or Her Successors under the Statute 21 & 22 Vic., Cap. 106 (*An Act for the better government of India*), or (so far only as regards British subjects within the dominions hereinafter mentioned) situate in the dominions of Princes and States in the East Indies in alliance with Her Majesty or Her Successors, and the lessees, representatives and assigns of such proprietors.

Railway Officers and servants to be "public servants" within meaning of Penal Code.

II. Every officer and servant of a Railway Company shall be deemed a "public servant" within the meaning of Sections 161, 162, 163, 164 and 165 of the Indian Penal Code.

"Government" to include a Railway Company.

III. In the definition of legal remuneration contained in the said Section 161, the word "Government" shall, for the purposes of this Act, be deemed to include a Railway Company.

Short title.

IV. This Act shall be called "The Railway Servants' Act, 1867."

ACT No. XXVII OF 1870.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 25th November 1870.)

An Act to amend the Indian Penal Code.

Preamble.

FOR the purpose of amending the Indian Penal Code; It is hereby enacted as follows:—

1. For section thirty-four of the said Code, the following section shall be substituted:—

Liability for act done by several persons in furtherance of common intention.

"34. When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

2. For section forty of the said Code, the following section shall be substituted:—

"Offence."

"40. Except in the chapter and sections mentioned in clauses two and three of this section, the word 'offence' denotes a thing made punishable by this Code.

"In Chapter IV and in the following sections, namely, sections 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word 'offence' denotes a thing punishable under this Code, or under any special or local law as hereinafter defined:

"And in sections 141, 176, 177, 201, 202, 212, 216 and 441, the word 'offence' has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine."

3. Section fifty-six of the said Code shall be read as if the following proviso were added thereto:—

Proviso as to sentence for term exceeding ten years, but not for life.

"Provided that, where an European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life."

4. After section one hundred and twenty-one of the said Code, the following section shall be inserted:—

Conspiracy to commit offences punishable by section 121.

"121A. Whoever, within or without British India, conspires to commit any of the offences punishable by section one hundred and twenty-one, or to deprive the Queen of the sovereignty of British India or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years.

"*Explanation.*—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof."

5. After section one hundred and twenty-four of the said Code, the following section shall be inserted:—

Exciting disaffection.

"124A. Whoever, by words, either spoken or intended to be read, or by signs, or by visible representation, or otherwise, excites, or attempts to excite, feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

"*Explanation.*—Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the Government, with intention of exciting only this species of disapprobation, is not an offence within this clause."

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Addition to section 131.

6. Section one hundred and thirty-one of the said Code shall be read as if the following Explanation were added thereto:—

"*Explanation.*—In this section the words 'officer' and 'soldier' include any person subject to the Articles of War for the better government of Her Majesty's Army, or to the Articles of War contained in Act No. V of 1869."

Amendment of sections 194 and 195.

7. Sections one hundred and ninety-four and one hundred and ninety-five of the said Code shall be read as if, after the words 'by this Code,' the words 'or the law of England' were inserted.

Amendment of sections 222 and 223.

8. Sections two hundred and twenty-two and two hundred and twenty-three of the said Code shall be construed as if, after the word "offence," the following words were inserted (that this to say) "or lawfully committed to custody;"

and section two hundred and twenty-two of the said Code shall be construed as if the following words were aded thereto (that is to say), "or if the person was lawfully committed to custody."

9. After section two hundred and twenty-five of the said Code, the following section shall be inserted:—

Escape from custody for failing to furnish security.

"225A. Whoever escapes, or attempts to escape, from any custody in which he is lawfully detained for failing, under the Code of Criminal Procedure, to furnish security for good behaviour, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

10. After section two hundred and ninety-four and before Chapter XV of the Indian Penal Code, the following section shall be inserted:—

Keeping lottery office.

"294A. Whoever keeps any office or place for the purpose of drawing any lottery not authorized by Government, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

"And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees."

11. Section three hundred and seven of the said Code shall be read as if the following clause were added thereto:—

Attempts by life-convicts.

"When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death."

12. After section three hundred and four of the same Code, the following section shall be inserted:—

Causing death by negligence.

"304A. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Application of certain chapters of Penal Code.

13. The following chapters of the same Code, namely, IV (*General Exceptions*), V (*Of Abetment*), and XXIII (*Of Attempts to commit Offences*), shall apply to offences punishable under the said sections 121A, 294A, and 304A, and the said Chapters IV and V shall apply to offences punishable under the said sections 124A and 225A.

14. No charge of an offence punishable under any of the said sections 121A, 124A, and 294A shall be entertained by any Court unless the prosecution be instituted by order of, or under authority from, the Local Government.

Order of Local Government necessary to prosecution under sections 121A, 124A, or 294A.

15. Nothing contained in this Act shall be taken to affect any of the provisions of any special or local law.

Saving of special and local laws.

16. The first schedule hereto annexed shall be deemed to be part of the schedule to the Code of Criminal Procedure.

Schedule I to be part of schedule to Criminal Procedure Code.

17. The enactments mentioned in the second schedule hereto annexed are repealed to the extent specified therein.

Repeal of enactments.

APPENDIX B.

ACT No. XI OF 1872.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of His Excellency the Governor-General on the 25th April 1872.)

An Act to provide for the trial of offences committed in places beyond British India and for the Extradition of Criminals.

Preamble.

WHEREAS by treaty, capitulation, agreement, grant, usage, sufferance and other lawful means the Governor-General of India in Council has power and jurisdiction within divers places beyond the limits of British India; and whereas such power and jurisdiction have from time to time been delegated to Political Agents and others acting under the authority of the Governor-General in Council; and whereas doubts have arisen how far the exercise of such power and jurisdiction, and the delegation thereof, are controlled by and dependent on the laws of British India; and whereas it is expedient to remove such doubts, and to consolidate and amend the law relating to the exercise and delegation of such power and jurisdiction, and to offences committed by British subjects beyond the limits of British India, and to the extradition of criminals; It is enacted as follows:—

Short title.

1. This Act may be called "The Foreign Jurisdiction and Extradition Act, 1872:"

Extent.

It extends to the whole of British India;

to all Native Indian subjects of Her Majesty without and beyond the Indian territories under the dominion of Her Majesty; and

to all European British subjects within the dominions of Princes and States in India in alliance with Her Majesty;

Commencement.

and it shall come into force on the passing thereof.

Repeal of enactments.

2. The enactments mentioned in the first schedule hereto annexed are repealed to the extent specified in the third column thereof.

"Political Agent" defined.

3. In this Act the expression "Political Agent" means and includes—

(1) the principal officer representing the British Indian Government in any territory or place beyond the limits of British India;

(2) any officer in British India appointed by the Governor-General in Council, or the Governor in Council of the Presidency of Fort St. George or

ACT XI OF 1872.

Bombay, to exercise all or any of the powers of a Political Agent under this Act for any place not forming part of British India;

"Native State." 'Native State' means,

in reference to Native Indian subjects of Her Majesty, all places without and beyond the Indian territories under the dominion of Her Majesty; and,

in reference to European British subjects, the dominions of Princes and States in India in alliance with Her Majesty.

POWERS OF BRITISH OFFICERS IN PLACES BEYOND BRITISH INDIA.

Exercise of powers of Governor-General in places beyond British India, and delegation thereof.

4. The Governor-General in Council may exercise any power or jurisdiction, which the Governor-General in Council now has, or may at any time hereafter have, within any country or place beyond the limits of British India; and may delegate the same to any servant of the British Indian Government, in such manner and to such extent as to the Governor-General in Council from time to time seems fit.

Notification of exercise of delegation of such powers.

5. A notification in the *Gazette of India* of the exercise by the Governor-General in Council of any such power or jurisdiction, and of the delegation thereof by him to any person or class of persons, and of the rules of procedure or other conditions to which such persons are to conform, and of the local area within which their powers are to be exercised, shall be conclusive proof in any Court of the truth of the matters stated in the notification.

Appointment powers and jurisdiction of Justices of the Peace.

6. The Governor-General in Council may appoint any European British subject, either by name or by virtue of his office, in any such country or place, to be a Justice of the Peace; and every such Justice of the Peace shall have all the powers conferred on Magistrates of the first class, who are Justices of the Peace and European British subjects, by any law for the time being in force in British India relating to Criminal Procedure. The Governor-General in Council may direct to what Court, having jurisdiction over European British subjects, any such Justice of the Peace is to commit for trial.

Confirmation of existing political Agents and Justices.

7. All Political Agents and all Justices of the Peace, heretofore appointed by the Governor-General in Council or the Governor in Council of the Presidency of Fort St. George or Bombay, in any such country or place as aforesaid, shall be deemed to be and to have been appointed, and to have and to have had jurisdiction, under the provisions of this Act.

Extension of criminal law of British India to British subjects in Native States.

8. The law relating to offences and to Criminal Procedure, for the time being in force in British India, shall, subject as to Procedure to such modifications as the Governor-General in Council from time to time directs, extend to all British subjects, European and Native, in Native States.

INQUIRIES IN BRITISH INDIA INTO CRIMES COMMITTED BY BRITISH SUBJECTS IN PLACES BEYOND BRITISH INDIA.

Liability of British subjects for offences committed in Native States.

9. All British subjects, European and Native, in British India, may be dealt with, in respect of offences committed by them in any Native State, as if such offences had been committed in any place within British India in which any such subject may be or may be found:

Provided that no charge as to any such offence shall be inquired into in British India, unless the Political Agent, if there be such, for the territory, in which the offence is said to have been committed, certifies that, in his opinion, the charge is one which ought to be inquired into in British India:

Political Agent to certify fitness of inquiry into charge.

Provided also that any proceedings taken against any person under this section, which would be a bar to subsequent proceedings against such person for the same offence, if such offence had been committed in British India, shall be a bar against further proceedings against him, under this Act, in respect of the same offence in any Native State.

Power to direct copies of depositions and exhibits to be received in evidence.

10. Whenever any such offence as is referred to in section nine is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a Judicial Officer in the State, in which such offence is alleged to have been committed, shall be received as evidence by the Court holding such inquiry or trial, in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

EXTRADITION.

Arrest and removal of persons, other than European British subjects, escaping into British India.

11. When an offence has been committed, or is supposed to have been committed, in any State against the law of such State by a person not being a European British subject, and such person escapes into, or is in British India, the Political Agent for such State may issue a warrant for his arrest and delivery at a place in such State, and to a person to be named in the warrant,

if such Political Agent thinks that the offence is one which ought to be inquired into in such State,

and if the act, said to have been done, would, if done in British India, have constituted an offence against any of the sections of the Indian Penal Code mentioned in the second schedule hereto, or under any other section of the said Code or any other law, which may, from time to time, be specified by the Governor-General in Council by a notification in the Gazette.

Direction and execution of warrant.

12. Such warrant may be directed to the Magistrate of any district in which the accused person is believed to be, and shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants; and the accused person, when arrested, shall be forwarded to the place and delivered to the officer named in the warrant.

Political Agent may himself dispose of case or make over person to ordinary Courts for trial.

13. Such Political Agent may either dispose of the case himself, or may give over the person so forwarded, whether he be a Native Indian subject of Her Majesty or not, to be tried by the ordinary Courts of the State in which the offence was committed, if he is generally or specially directed to do so by the Governor-General in Council, or by the Governors in Council of the Presidency of Fort St. George or Bombay respectively.

Requisitions for extradition by the executive of any part of British dominions, or Foreign power.

14. Whenever a requisition is made to the Governor-General in Council or any Local Government by or by the authority of the persons for the time being administering the Executive Government of any part of the dominions of Her Majesty, or the territory of any Foreign Prince or State, that any person accused of having committed an offence in such dominions or territory should be given up, the Governor-General in Council or such Local Government, as the case may be, may issue an order to any Magistrate, who would have had jurisdiction to inquire into the offence, if it had been committed within his local jurisdiction, directing him to inquire into the truth of such accusation.

The Magistrate so directed shall issue a summons or warrant for the arrest of such person, according as the offence named appears to be one for which a summons or warrant would ordinarily issue; and shall inquire into the truth of such accusation; and shall report thereon to the Government by which he was directed to hold the said inquiry. If, upon receipt of such report, such

ACT XI OF 1872.

Government is of opinion that the accused person ought to be given up to the persons making such requisition, it may issue a warrant for the custody and removal of such accused person and for his delivery at a place and to a person to be named in the warrant.

The provisions of section ten shall apply to inquiries held under this section.

This section shall not affect the provisions of any law or treaty, for the time being in force, as to the extradition of offenders; but the procedure provided by any such law or treaty shall be followed in every case to which it applies.

Power to make rules.

15. The Governor-General in Council may make, and may from time to time alter, rules to provide for—

(1) the confinement, diet and prison discipline of British subjects, European or Native, imprisoned by Political Agents under this Act;

(2) the removal of accused persons under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant, as entitled to receive them;

(3) and generally to carry out the purposes of this Act.

SCHEDULE I.

Number and Year.	Title.	Extent of repeal.
26 Geo. III, c. 57.	An Act for the further regulation of the trial of persons accused of certain offences committed in the East Indies; for repealing so much of an Act, made in the twenty-fourth year of the reign of his present Majesty (intituled "An Act for the better regulation and management of the affairs of the East India Company, and of the British Possessions in India, and for establishing a Court of Judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies"), as requires the Servants of the East India Company to deliver Inventories of their Estates and Effects; for rendering the laws more effectual against persons unlawfully resorting to the East Indies; and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India.	Section 29.
33 Geo. III, c. 52.	An Act for continuing in the East India Company, for a further term, the possession of the British Territories in India, together with their exclusive trade, under certain limitations; for establishing further regulations for the government of the said territories, and the better administration of justice within the same; for appropriating to certain uses the revenues and profits of the said Company; and for making provision for the good order and government of the Towns of Calcutta, Madras and Bombay.	Section 67.
Act I of 1849.	An Act to provide more effectually for the punishment of offences committed in Foreign States.	So much as is unrepealed.
Act VII of 1854.	An Act for the apprehension within the territories under the Government of the East India Company of persons charged with the commission of heinous offences beyond the limits of the said territories, and for delivering them up to Justice, and to provide for the execution of warrants in places out of the jurisdiction of the authorities issuing them.	Ditto.

SCHEDULE II.

SECTIONS OF THE INDIAN PENAL CODE REFERRED TO IN SECTION II.

Sections 230 to 263, both inclusive; sections 299 to 304, both inclusive; sections 307, 310 and 311; sections 312 to 317, both inclusive; sections 323 to 333, both inclusive; sections 347 and 348; sections 360 to 373, both inclusive; sections 375 to 377, both inclusive; sections 378 to 414, both inclusive; sections 435 to 440, both inclusive; sections 443 to 446, both inclusive; sections 464 to 468, both inclusive; sections 471 to 477, both inclusive.

APPENDIX C.

The following Acts of Parliament provide for the trial of persons in British India for offences committed in other countries and on the High Seas:—

12 & 13 VIC., CAP. 96.

Preamble. 10 & 11 W. III, c. 7.

WHEREAS by an Act passed in the eleventh year of the reign of King *William* the Third, intituled an Act for the more effectual suppression of piracy, it is enacted, that all piracies, felonies, and robberies committed on the sea, or in any haven, river, creek, or place where the Admiral or Admirals have power, authority, or jurisdiction, may be examined, inquired of, tried, heard, determined, and adjudged, in any place at sea or upon the land in any of His Majesty's islands, plantations, colonies, dominions, forts, or factories, to be appointed for that purpose by the King's commission, in the manner therein directed, and according to the civil law and the method and rules of the Admiralty: And whereas by an Act passed in the forty-sixth year of the reign of King *George* the Third, intituled an Act for the speedy trial of offences committed in distant parts upon the sea, it is enacted, that all treasons, piracies, felonies, robberies, murders, conspiracies and other offences of what nature or kind soever, committed upon the sea, or in any haven, river, creek, or place where the Admiral or Admirals have power, authority, or jurisdiction, may be inquired of, tried, heard, determined, and adjudged, according to the common course of the laws of this realm used for offences committed upon the land within this realm, and not otherwise, in any of His Majesty's islands, plantations, colonies, dominions, forts, or factories under and by virtue of the King's commission or commissions, under the great seal of *Great Britain*, to be directed to Commissioners in the manner and with the powers and authorities therein provided: And whereas it is expedient to make further and better provision for the apprehension, custody, and trial in Her Majesty's islands, plantations, colonies, dominions, forts, and factories of persons charged with the commission of such offences on the sea, or in any such haven, river, creek, or place as aforesaid: Be it therefore enacted, &c.

46 G. III, c. 54.

All persons charged in any colony with offences committed on the sea, may be dealt with in the same manner as if the offences had been committed on waters within the local jurisdiction of the Courts of the colony.

I. That if any person within any colony shall be charged with the commission of any treason, piracy, felony, robbery, murder, conspiracy, or other offence, of what nature or kind soever, committed upon the sea, or in any haven, river, creek, or place where the Admiral or Admirals have power, authority, or jurisdiction, or if any person charged with the commission of any such offence upon the sea, or in any such haven, river, creek, or place shall be brought for trial to any colony, then and in every such case all Magistrates, Justices of the Peace, public prosecutors, juries, Judges, Courts, public officers, and other persons in such colony shall have and exercise the same jurisdiction and authorities for inquiring of, trying, hearing, determining, and adjudging such offences, and they are hereby respectively authorized, empowered, and required to institute and carry on all such proceedings for the bringing of such

12 & 13 Vic., Cap. 96.

person so charged as aforesaid to trial, and for and auxiliary to and consequent upon the trial of any such person for any such offence wherewith he may be charged as aforesaid, as by the law of such colony would and ought to have been had and exercised or instituted and carried on by them respectively if such offence had been committed, and such person had been charged with having committed the same, upon any waters situate within the limits of any such colony, and within the limits of the local jurisdiction of the Courts of criminal justice of such colony.

Persons convicted of such offences shall suffer the like punishment as on conviction of like offences in England.

II. Provided always, and be it enacted, that if any person shall be convicted before any such Court of any such offences, such person so convicted shall be subject and liable to and shall suffer all such and the same pains, penalties, and forfeitures as by any law or laws now in force persons convicted of the same respectively would be subject and liable to in case such offence had been committed, and were inquired of, tried, heard, determined, and adjudged, in *England*, any law statute or usage to the contrary notwithstanding.

In prosecuting a British subject for an offence committed on board a British Ship on the High Seas (1) he must be charged with an offence under English Law; (2) the punishment must be according to English Law; and the trial must be carried on under the Procedure of the Local Court. (*Queen* v. *Thompson* 1 L. C. Rep. Cr. R., p. 1.)

Provision for the trial of murder and manslaughter, where the death only happens in the colony or upon the sea.

III. And be it enacted, that where any person shall die in any colony of any stroke, poisoning, or hurt, such person having been feloniously stricken, poisoned, or hurt upon the sea, or in any haven, river, creek, or place where the Admiral or Admirals have power, authority, or jurisdiction, or at any place out of such colony, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory before the fact to murder, or after the fact to murder or manslaughter, may be dealt with, inquired of, tried, determined, and punished in such colony in the same manner in all respects as if such offence had been wholly committed in that colony; and that if any person in any colony shall be charged with any such offence as aforesaid in respect of the death of any person who, having been feloniously stricken, poisoned, or otherwise hurt, shall have died of such stroke, poisoning, or hurt upon the sea, or in any haven, river, creek, or place where the Admiral or Admirals have power, authority, or jurisdiction, such offence shall be held for the purpose of this Act to have been wholly committed upon the sea.

Jurisdiction of the Supreme Courts of New South Wales and Vandiemen's Land preserved.
9 G. IV, c. 83.

IV. Provided also, and be it enacted, that nothing in this Act contained shall in any way affect or abridge the jurisdiction of the Supreme Courts of *New South Wales* and *Vandiemen's Land*, as established by an Act passed in the ninth year of the reign of King *George* the Fourth, intituled an Act to provide for the administration of justice in *New South Wales* and *Vandiemen's Land*, and for the more effectual government thereof, and for other purposes relating thereto.

Interpretation of terms.

V. And be it enacted, that for the purposes of the Act the word "colony" shall mean any island, plantation, colony, dominion, fort, or factory of Her Majesty, except any island within the United Kingdom, and the islands of *Man*, *Guernsey*, *Jersey*, *Alderney*, and *Sark*, and the islands adjacent thereto respectively, and except also all such parts and places as are under the government of the *East India* Company; and the word "Governor" shall mean the officer for the time being administering the government of any colony.

Act may be amended, &c.

VI. And be it enacted, that this Act may be amended or repealed by any Act to be passed during this present Session of Parliament.

17 & 18 Vic., Cap. 104, S. 267.

17 & 18 Vic., Cap. 104, S. 267; 18 & 19 Vic., Cap. 91, S. 21; and 23 & 24 Vic., Cap. 88.

All offences against property or person committed in or at any place, either ashore or afloat out of Her Majesty's dominions, by any Master, seaman, or apprentice, who at the time when the offence is committed is, or within three months previously has been, employed in any British Ship, shall be deemed to be offences of the same nature respectively, and be enquired of, heard, tried, determined, and adjudged in the same manner, and by the same Courts, and in the same places as if such offences had been committed within the jurisdiction of the Admiralty of England.

By "offences" are meant offences under English Law. (*Queen* v. *Thompson*, 1 L. C. Rep., Cr. R., p. 1.)

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18 & 19 Vic., Cap. 91, S. 21.

Legal Procedure.
Part X of Merchant Shipping Act, 1854.
Jurisdiction in case of offences on board ship.
12 and 13 Vic., c. 96.

If any person, being a British subject, charged with having committed any crime or offence on board any British Ship on the High Seas, or in any Foreign Port or Harbour, or if any person, not being a British subject, charged with having committed any crime or offence on board any British Ship on the High Seas, is found within the jurisdiction of any Court of Justice in Her Majesty's dominions which would have had cognizance of such crime or offence if committed within the limits of its ordinary jurisdiction, such Court shall have jurisdiction to hear and try the case as if such crime or offence had been committed within such limits: Provided, that nothing contained in this Section shall be construed to alter or interfere with the Act of the Thirteenth Year of Her present Majesty, Chapter Ninety-six.

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23 & 24 Vic., Cap. 88.

12 & 13 Vic., c. 96.

Whereas an Act was passed in the Session holden in the Twelfth and Thirteenth Years of Her Majesty, Chapter Ninety-six, "to provide for the prosecution and trial in Her Majesty's colonies of offences committed within the jurisdiction of the Admiralty," and by such Act it was provided, that for the purposes thereof the word "colony" should mean any island, plantation, colony, dominion, fort, or factory of Her Majesty, except the United Kingdom and the Islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent thereto respectively, and except also all such parts and places as were under the government of the East India Company: And whereas it is expedient that the provisions of the said Act should extend to all parts and places heretofore under the Government of the East India Company in like manner as to other Colonial and Foreign possessions of Her Majesty: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Provisions of the recited Act to extend to India.

I. So much of the said Act as excepts the parts and places then under the Government of the East India Company, from the interpretation of the word "Colony" shall be repealed, and for the purposes of the said Act the word "Colony" therein shall include and apply to every part and place heretofore under the Government of the East India Company, or which may be under the Government of Her Majesty in India, and all the provisions of the said Acts shall be construed and take effect accordingly.

30 & 31 VIC., CAP. 124, S. 2.

Provisions for persons entitled to be tried by the Supreme Court of a Presidency.

II. Provided always, that where any person within any place in India is charged with the commission of any offence in respect of which jurisdiction is given by the said Act, or where any person charged with the commission of any such offence is brought for trial under the said Act to any place in India, if at any time before his trial he make it appear to the Court exercising Criminal Jurisdiction in the place where he is so charged or brought for trial, that in case the offence charged had been committed in such place he could have been tried only in the Supreme Court of one of the three Presidencies in India, and claim to be tried by such a Supreme Court accordingly, the said Court exercising Criminal Jurisdiction as aforesaid shall certify the fact and claim to the Governor of such place or Chief Local Authority thereof, and such Governor or Chief Local Authority thereupon shall order and cause the persons charged to be sent in custody to such one of the Presidencies as such Governor shall think fit, for trial before the Supreme Court of such Presidency, and the said Supreme Court and all public Officers and other persons in the Presidency shall have the same jurisdiction and authorities, and proceed in the same manner in relation to the person charged with such offence, as if the same had been committed or originally charged to have been committed within the limits of the ordinary jurisdiction of such Supreme Court.

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30 & 31 VIC., CAP. 124, S. 2.

Offences by British subjects on board ships.

If any British subject commits any crime or offence on board any British Ship, or on board any Foreign Ship, to which he does not belong, any Court of Justice in Her Majesty's dominions, which would have had cognizance of such crime or offence if committed on board a British Ship within the limits of the ordinary jurisdiction of such Court, shall have jurisdiction to hear and determine the case as if the said crime or offence had been committed as last aforesaid.

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